

General approach

**Recommendations in response to submissions on the
Proposed Regional Plan for Northland - Section 42A
hearing report**

Date: 22/06/2018
Author: Ben Lee
Version: Final

Table of contents

Purpose and format of the report.....	4
Report author	5
Approach to Section 42A reports.....	5
Approach to objectives and policies	6
Summary of recommendations	6
Submissions	7
Key matters	8
Conclusion.....	21
Structure and layout of the Plan	23
Order of rules, policies and objectives	23
Rule bundling	24
Use of Te Reo Māori	25
General submissions on the Plan.....	25
More explanation and context.....	25
Optional plan content.....	26
Other general submissions	26
Policies D.2.1 – D.2.5.....	28
Submissions and analysis	28
Recommendations.....	32
Evaluation of recommended changes.....	32
Maps (general submissions)	33
Submissions and analysis	33
Recommendation	34
The Section 32 report.....	34
Evaluating the objective - 32(1)(a)	36

Evaluating the policies and rules	36
General submissions on rules	37
Submissions and analysis	37
Submissions on G Administrative matters	38
Submissions and analysis	39
Submissions on matters not included in the plan.....	40
General	40
Refining New Zealand – proposed outline plan.....	42
Climate change.....	44
Definitions (general submissions).....	45
RMA definitions	45
“Authorised”	45
“Property” and “Other property”	46
Adding ‘benefits’ to restricted discretionary activity rules	47
Recommendation	48
Appendix A - Authors of Section 42A Reports	49
Appendix B – The submissions and the s42A report they are being addressed in.....	54
Appendix C - Extract on scope from the Independent Hearing Panel report to Auckland Council..	62

Purpose and format of the report

1. This report was prepared pursuant to Section 42A of the Resource Management Act 1991 (RMA). This report provides an overview to the approach used for the S42A reports and addresses the more general submissions on the Proposed Regional Plan for Northland (Proposed Plan). The matters covered in this report are:
 - Approach to Section 42A reports
 - Approach to objectives and policies
 - Structure and layout of the Plan
 - General submissions on the Plan
 - Policies D.2.1 – D.2.5
 - Maps (general submissions)
 - The Section 32 report
 - General submissions on rules
 - Submissions on *G Administrative matters*
 - Submissions on matters not included in the plan
 - Definitions (general submissions)
 - Adding 'benefits' to restricted discretionary activity rules
2. The recommendations made in this report are mine and are not binding on the hearing panel. It should not be assumed that the hearing panel will reach the same conclusions.
3. In addition, my recommendations may change in response to presentations and evidence provided to the hearing panel. It is expected the hearing panel will ask s42A authors to report any changes to their recommendations at the end of the hearing.
4. Generally, the specific recommended changes to the provisions are not set out word-for-word in this report. The specific changes (including scope for changes) are shown in the document *Proposed Regional Plan for Northland – S42A recommended changes*.
5. This report should be read in conjunction with section 1 *Introduction* in the Section 32 report.

Report author

6. My name is Ben Lee and I have overall responsibility for this report. I work as the Policy Development Manager for the Northland Regional Council (regional council). Refer to **Appendix A** for more information about my qualifications and experience.
7. Michael Day authored the *Climate change* section of this report.
8. The following council staff have assisted me with the preparation of this report:
 - Stuart Savill, Consents Manager, Northland Regional Council
 - Abraham Witana, Kaiarahi – Tikanga Maori, Northland Regional Council
 - Michael Day, Resource Management Manager, Northland Regional Council
9. Although this is a council hearing, I have read the Code of Conduct for Expert Witnesses contained in the Practice Note issued by the Environment Court December 2014. I have complied with that Code when preparing this report and I agree to comply with it when giving oral presentations.

Approach to Section 42A reports

10. Separate Section 42A reports have been prepared by topic¹ and generally align with the topics or sub-topics in the Section 32 report. Each s42A report is structured with a focus on the key matters raised in submissions for the topic. Matters covered by submissions that fall outside the key matters are addressed in less detail.
11. For some matters, there are numerous submitters making the same or similar submissions. In this case, some submitters may not be identified in the analyses of the submissions.
12. Further submitters are generally not referred to as they are in support or opposition of original submissions (they cannot go beyond the scope of the original submissions). The exception is where a further submission raises reasons that have not been raised in the submissions and are material to the analyses.

¹ The approach of addressing submissions by topic (rather than addressing submissions and/or submission points individually) is consistent with Clause 10 of Schedule 1 to the RMA.

13. The report authors and their qualifications and experience is included in **Appendix A**.
14. **Appendix B** shows the parts of the Plan that each s42A report addresses.
15. Specific recommended changes to the provisions are generally not set out word-for-word in the s42A report. The specific changes (including jurisdiction for changes) are shown in the document *Proposed Regional Plan for Northland – S42A recommended changes*.
16. The s42A reports should be read in conjunction with the Section 32 report. The s42A reports generally do not repeat material already covered in the Section 32 reports. For example, the s42A reports generally do not set out the legal and planning context for the respective topics, unless it is material to addressing submissions and it has not already been addressed in the Section 32 report.

Approach to objectives and policies

17. This section covers:
 - The single objective
 - The non-inclusion of policies if policy in a higher policy document is adequate.
18. The structure and layout of the plan is addressed in the section *Structure and layout of the Plan*. The non-inclusion of optional content (e.g. explanations) is addressed the section *General submissions on the Plan*.
19. Section 1.5 of the Section 32 report outlines the rationale for the approach adopted for the Plan.

Summary of recommendations

20. I have started this section with an overview of my recommendations as it influences how I have written up my analysis of the submissions in this report. Many reasons have been presented for amending the general approach to the Plan, and while I accept some of the reasons, I do not agree with all of them. I have tended not to go into a lot of detail in my response to the reasons I do not agree with, as it is not necessary given my recommendation.
21. My recommendation is that:
 - Regionally specific objectives are added to the Plan

- Policies are added to the Plan to implement the objectives and to more fully give effect to higher policy documents.

22. The analysis and recommendations for the wording of the specific objectives are addressed in the s42A report relating to the matter addressed by the objective.

Submissions

23. Many submitters were critical of the single objective (in particular) and the non-inclusion of policies if policy in a higher policy document is adequate. The main criticisms were:

- It does not satisfy Section 67(1) - the plan must include objectives for the region and policies to implement the objectives. Without identifying objectives, or goals for the plan that relate to the Council functions, the policies and rules have nothing to implement.
- The absence of objectives and polices mean the Plan is counter to the Section 67(3) requirement to give effect to higher policy documents.
- The approach is inconsistent with established case law, which provides that plan making should begin with objectives, rather than with the rules. Policies and rules should be driven from the "top down."
- The Plan should be a 'one stop shop' - plan users should not need to refer to higher policy documents.
- The single objective will not assist the council to carry out its functions in terms of Section 63.
- The *Davidson*² and *King Salmon*³ cases confirmed the principle that there is no need to resort to high policy documents for guidance on a matter if it is addressed in a lower order document, unless the lower order document is invalid, there is incomplete coverage or there is uncertainty of meaning.
- Increases complexity having to refer to the Plan and higher policy documents

² R J Davidson Family Trust v Marlborough District Council [2017] NZHC 52

³ Environmental Defence Society Inc v New Zealand King Salmon Company Limited [2014] NZSC 38.

- The use of the plural “objectives” throughout the RMA supports the requirement for more than one objective
- In the absence of objectives there is no guidance on how key regional issues are to be managed and there is no context for assessing environmental effects and proposed offset mitigation.
- Objectives are a critical part of assessing non-complying activities
- Not all the matters in the Plan are addressed in higher policy documents. In other words, for some matters in the Plan there is no higher-level direction to rely on.
- There was an absence of policies for various matters which mean that higher level policy documents haven’t been given effect to.
- Assuming new objectives are added, then policies would need to be added to address and reflect the new objectives.
- Policies should be included to guide decision making and provide for rules.

Key matters

24. In this section I address the criticisms listed above.

Contrary to Section 67(1)

25. Several submitters suggest the lack of objectives specific to the region is contrary to Section 67(1), RMA. (Northport Ltd⁴, Marsden Maritime Holdings Ltd⁵, Ravensdown Limited⁶, Royal Forest and Bird Protection Society NZ⁷, Tegel Foods Ltd⁸, Yachting NZ⁹).

26. Section 67(1) states:

67 Contents of regional plans

(1) A regional plan must state—

⁴ Submission, p.8

⁵ Submission, p.4

⁶ Submission, p.3 & 20

⁷ Submission, p.2

⁸ Submission, p.5

⁹ Submission, paragraph 9.

- (a) *the objectives for the region; and*
- (b) *the policies to implement the objectives; and*
- (c) *the rules (if any) to implement the policies.*

Objectives

27. Submitters have argued that “*for the region*” means that the objectives need to be specific to the region. However, I think it could also be interpreted as the objective(s) that *apply* to the region – whether they are specific or general. However, given my recommendation I do not think it is necessary to go into detail on this.
28. Submitters have referred to *King Salmon*¹⁰ as evidence for the need for the Proposed Plan to translate the general principles of higher policy documents into specific objectives. The Supreme Court’s decision considered the way in which the New Zealand Coastal Policy Statement (NZCPS) should be given effect to in considering a plan change. In particular, submitters highlight the Supreme Court’s observation that “...*the NZCPS translates the general principles to more specific focussed objectives and policies*”.
29. I think care needs to be taken in interpreting this statement and applying it to the current situation. It was an observation about the NZCPS, and not a conclusion that planning documents must be more specific the lower down the hierarchy they are. But given my recommendation to include objectives, again it is not necessary to delve into the matter.
30. However, I think it is worthwhile highlighting the issues I see with coming up with specific objectives in a regional plan, as it is relevant to the specificity of the objectives being recommended.
31. There are many examples of objectives in regional plans that are not any more specific than the RPS or relevant NPS. This indicates that objective specificity, as a principle, does not appear to have been an issue plan decision makers or the courts have been challenged on, reinforced by an apparent lack of case law on it¹¹.

¹⁰ Environmental Defence Society Inc v New Zealand King Salmon Company Limited [2014] NZSC 38.

¹¹ From a review of Resource Management and Salmon Environmental Law commentary on sections 62 (Contents of regional policy statements), 67 (Contents of regional plans), and 75 (Contents of district plans) – 18 April 2018.

32. Even many of the objectives sought by submitters to be added to the Proposed Plan are no more specific than what is already contained in a higher policy document. As an example, the Minister of Conservation and Far North District Council request the addition of objectives that are a copy of the RPS objectives¹².
33. This highlights the challenge in coming up with meaningful objectives that are more specific than the objectives in higher level documents. The RPS and even NPS's have some quite specific objectives which (with amendments to particularise them to the Proposed Plan), are arguably already specific enough for the purposes of a regional plan.

Giving effect to higher policy documents

34. Note – this section does not address the NPSFM's requirement for the inclusion of freshwater objectives. This is addressed in the s42A reports: *Water quality management – general matters* and *Allocation and use of fresh water*.
35. Section 67(3), RMA states:

67 Contents of regional plans

...

(3) A regional plan must give effect to—

(a) any national policy statement; and

(b) any New Zealand coastal policy statement; and

(ba) a national planning standard; and

(c) any regional policy statement

36. Some submitters (for example Royal Forest and Bird Protection Society NZ¹³ and the Minister of Conservation¹⁴) suggest the absence of policies and objectives in the Plan specifically addressing the matters in higher policy document is not “giving effect” to the high policy documents¹⁵.

¹² Refer Summary of Decisions Requested – page 593 (Far North District Council) and page 598 (Minister of Conservation)

¹³ Submission, for example parag 12.

¹⁴ Submission, p. 66.

¹⁵ As required by 67(3), RMA.

37. The following documents direct the Plan to include objectives, policies and methods¹⁶:
- National Policy Statement for Freshwater Management
 - National Policy Statement for Renewable Electricity Generation
 - New Zealand Coastal Policy Statement
 - Regional Policy Statement for Northland

King Salmon

38. As noted by the Minister of Conservation:

Section 67(3)(b) requires that a regional plan must give effect to the New Zealand Coastal Policy Statement. In King Salmon, the Supreme Court stated that “give effect to” simply means “implement” and that it created “a firm obligation on the part of those subject to it.” The Supreme Court also stated that “the NZCPS translates the general principles to more specific focussed objectives and policies” (para [90]).¹⁷

39. Again, I think care needs to be taken in interpreting the application of *King Salmon*. *King Salmon* does not direct how a regional plan is to ‘implement’ the NZCPS. *King Salmon* was considering a situation where allowing an activity (marine farming) would mean a NZPCS policy would be contravened and what that means. The concern of the Minister of Conservation is not about the Proposed Plan’s provisions contravening the NZCPS – it is about the extent to which the NZCPS is implemented, which was not traversed in *King Salmon*.

The package of provisions

40. The Minister of Conservation suggests that the single objective (in particular) does not translate the general principles of the NZCPS to more specific focussed objectives and therefore it is not giving effect to the NZCPS¹⁸.
41. My view is that the judgement of whether the Plan is giving effect to a higher policy document should be based on assessing all the provisions in the Plan and not just a single provision, because:

¹⁶ The National Policy Statement on Electricity Transmission requires the regional council to include provisions but doesn’t specify state that it has to be in a regional plan.

¹⁷ Page 66 of the Minister of Conservation’s submission.

¹⁸ Submission, p. 66.

- The requirement in higher policy document to include provisions¹⁹ is always “objectives policies and rules / methods”. In other words, the direction is to include a package of provisions to address the matter.
- Section 67(3) refers to the plan (i.e. in its entirety) giving effect to the higher order instruments.

One-stop shop for resource consent processing

42. Several submitters have raised concerns about the increased complexity of having to refer to higher policy documents for resource consent processes and the implied implication of *Davidson*²⁰ and *King Salmon*²¹ of not needing to resort to higher policy documents unless the lower order document is invalid, there is incomplete coverage or there is uncertainty of meaning, also applies to the consideration of resource consent applications.²² I disagree – my view is that section 104 directs that all relevant policy documents need to be referred to.
43. Section 104 is the key section of the RMA which directs how resource consent applications are to be considered:

104 Consideration of applications

- (1) *When considering an application for a resource consent and any submissions received, the consent authority must, subject to [Part 2](#), have regard to—*
- (a) any actual and potential effects on the environment of allowing the activity; and*
 - (ab) any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity; and*
 - (b) any relevant provisions of—*
 - (i) a national environmental standard:*
 - (ii) other regulations:*
 - (iii) a national policy statement:*
 - (iv) a New Zealand coastal policy statement:*
 - (v) a regional policy statement or proposed regional policy statement:*
 - (vi) a plan or proposed plan; and*

¹⁹ Except for the NPSFM's requirement to include freshwater objectives

²⁰ R J Davidson Family Trust v Marlborough District Council [2017] NZHC 52

²¹ Environmental Defence Society Inc v New Zealand King Salmon Company Limited [2014] NZSC 38.

²² See for example Northport submission, starting parag F18, p.9.

(c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.

44. In *Infinity Investment Group Holdings*²³ the Environment Court considered the role of s104 against the background of King Salmon and Davidson (at parag 35 and 36):

[35] The intermediate instruments which lie between Part 2 of the RMA on the one hand, and the relevant district or regional plan on the other, always need to be had regard to under section 104(1)(b) but the weight to be given to them will vary from case to case. In particular the weight will be affected by the same factors which trigger the "subject to Part 2" phrase. That is, if the district or regional plan in question is ambiguous, incomplete, or illegal then an answer should be looked for in one of the higher instruments...

[36] Importantly, the weight to be attributed a higher order instrument when having regard to it under section 104(1)(b) will also be affected by whether that instrument post-dates the earlier plan. If it does then there can be no assurance that the higher order statutory instrument was considered let alone given effect to. In effect there are three situations to consider:

- (a) if there is no relevant incompleteness, ambiguity or illegality in the regional (or district) plan and it gives effect to the higher order instruments, then less weight needs to be given to the latter;*
- (b) there is the situation where there are no relevant difficulties in the regional (or district) plan but there are later, higher instruments which must be had regard to and, if the district plan is inconsistent with them (obviously it does not give effect to a post-dated higher instrument), given considerable weight; and*
- (c) finally if there is some incompleteness, ambiguity or illegality in a regional (or district) plan which at first sight brings Part 2 of the RMA into play, then there may still be no need to refer to Part 2 because there are higher instruments in the statutory hierarchy (which must be considered under section 104(1)(b) RMA) which will remedy the problem in the regional (or district plan). That is*

²³ *Infinity Investment Group Holdings Ltd v Canterbury Regional Council*, 2017, NZ EnvC 36.

especially so if the higher instruments came into force after the relevant local authority plan.

45. This case highlights that an applicant and a decision maker will always need to look at the regional plan and higher policy documents. As highlighted in *Royal Forest and Bird Protection Society vs Bay of Plenty Regional Council*²⁴ (at parag. 88):

...there is a distinct risk that the intent and effect of higher order plans can be diluted, or even lost, in the provisions of plans lower in the planning hierarchy. Put colloquially, the story can be lost in the re-telling.

46. A final note - in *Davidson and King Salmon*, reference was made to the applicability of the NZCPS and the local RPS. If the principle of not having to refer to higher policy documents applied, then one would have thought that there would have been some analysis of the RPS and the extent to which it implemented the NZCPS – and there was not.

Reliance on 'incomplete coverage'

47. Arguably the Plan's approach of not including provisions if a matter is adequately covered in a higher policy document is consistent with *Davidson and King Salmon*. If the Plan does not address the matter (incomplete coverage), then the higher policy document is to be referred to.
48. However, I accept that there is some doubt about relying on the principle of 'incomplete coverage'. In preparing the Proposed Plan, 'incomplete coverage' was interpreted as enabling reliance on provisions in a higher order document. An alternative view was articulated in Northport's submission:

In King Salmon, the Court included three caveats for when it might be appropriate to seek guidance from higher order policy documents. One of those caveats was where there is "incomplete coverage" of matters in a lower order plan. Such a caveat could be expected to apply where a lower order plan has not been prepared under (and therefore has not given effect to) a higher order plan, and/or where a plan has been prepared prior to King Salmon. However, where a plan is being prepared to give effect to a higher order document, in full knowledge of the implications of King Salmon (and Davidson in the

²⁴ Royal Forest and Bird Protection Society of New Zealand Incorporated vs Bay of Plenty Regional Council, 2017, NZHC 3080.

context of future applications for resource consent), it is fundamentally inappropriate to rely on these caveats. Indeed, they may be held not to apply.²⁵

49. I accept that Northport have a point and therefore raises some doubt with the approach.

Objectives plural

50. The use of the plural “objectives” throughout the RMA supports the requirement for more than one objective (Minister of Conservation²⁶ and Royal Forest and Bird Protection Society NZ²⁷).

51. Although the word “objectives” is in the plural, it does not preclude having a single objective. Section 33 of the Interpretation Act provides that in all New Zealand statutes – “Words in the singular include the plural and words in the plural include the singular”.

Lack of guidance

52. Many submitters were concerned that the Proposed Plan contains no clear statements of environmental outcomes for the Northland Region. In the absence of associated objectives there is no guidance on how key regional issues are to be managed and there is no context for assessing environmental effects and proposed offset mitigation (Affco NZ²⁸, Fonterra²⁹, Heritage NZ³⁰, GBC Winstone³¹, Top Energy³² Haititaimarangi Marae 339 Trust³³, Transpower NZ Ltd³⁴, New Zealand Transport Agency³⁵, and Northport Ltd³⁶).

53. In general terms, the RPS (in combination with NPS's) already sets out clear statements about the regionally significant issues for the region, and contains objectives to direct the provisions in the Proposed Plan and guide the consideration of resource consent applications.

²⁵ Northport submission, parag 19, p.10

²⁶ Submission, p.66

²⁷ Submission, p.3

²⁸ Submission, p.17

²⁹ Submission, p.34

³⁰ Submission, p.76

³¹ Submission, p.18

³² Submission, p.24

³³ Submission, p.23

³⁴ Submission, p.19

³⁵ Submission, p.5

³⁶ Submission, p.10

54. The New Zealand Transport Agency³⁷ raises the point in their submission that there are several policies that have no apparent RPS objective on which to rely - including policies for water quality standards, underwater noise, mangrove removal and marine pests.
55. A matter addressed by a policy (e.g. mangrove removal) does not necessarily require a specific objective to link to. The following sets out my assessment of relevant RPS objectives applying to the list of matters highlighted by the New Zealand Transport Agency:

Matter raised by NZTA	Relevant RPS objectives
Water quality standards	3.2 Region-wide water quality 3.4 Indigenous eco systems and biodiversity 3.5 Enabling economic wellbeing 3.7 Regionally significant infrastructure
Underwater noise	3.4 Indigenous ecosystems and biodiversity 3.5 Enabling economic wellbeing 3.7 Regionally significant infrastructure
Mangrove removal	3.4 Indigenous ecosystems and biodiversity 3.7 Regionally significant infrastructure 3.14 Natural character, outstanding natural features, outstanding natural landscapes and historic heritage 3.15 Active management
Marine pests	3.4 Indigenous eco systems and biodiversity 3.5 Enabling economic wellbeing 3.7 Regionally significant infrastructure 3.14 Natural character, outstanding natural features, outstanding natural landscapes and historic heritage

56. The RPS does not address all resource management issues for the region – only the regionally significant issues. As part of developing the RPS several resource management issues that are within council’s functions were assessed and discounted from inclusion in the RPS because they were not regionally significant. The discounted issue relevant to the regional council functions and the Proposed Plan ³⁸ is air quality
57. Importantly, air quality does not have any specific NPS policy³⁹ (part of the reason why it was not identified as a regionally significant issue).

³⁷ Submission, p.5.

³⁸ Genetically modified organisms (GMO) was also on the list but that issue is being addressed separately.

³⁹ There are the Resource Management (National Environmental Standards for Air Quality) Regulations 2004. But they do not include policy direction for managing air discharges (just national ‘rules’)

58. So, while I disagree with the submitters that there is an absence of environmental outcomes for the region as a blanket statement, the same cannot be said for air quality. This is a gap which I think needs filling and the only solution would be to add an objective.

Objectives necessary for non-complying gateway test

59. Some submitters noted that objectives are a critical part of assessing non-complying activities (Section 104D(1)(b)) (Affco NZ⁴⁰, New Zealand Transport Agency⁴¹, Tegel Foods Ltd⁴²).

60. Section 104D states:

104D Particular restrictions for non-complying activities

(1) Despite any decision made for the purpose of notification in relation to adverse effects, a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either—

(a) the adverse effects of the activity on the environment (other than any effect to which section 104(3)(a)(ii) applies) will be minor; or

(b) the application is for an activity that will not be contrary to the objectives and policies of —

(i) the relevant plan, if there is a plan but no proposed plan in respect of the activity; or

(ii) the relevant proposed plan, if there is a proposed plan but no relevant plan in respect of the activity; or

(iii) both the relevant plan and the relevant proposed plan, if there is both a plan and a proposed plan in respect of the activity.

(2) To avoid doubt, section 104(2) applies to the determination of an application for a non-complying activity.

61. Section 1.5 of the Section 32 report outlines the approach used in the Plan to ‘get around’ the 104D requirement to test against objectives and policies in the proposed Plan. The approach involves Policy D.2.3 which references policies in the RPS. However, as submitters have highlighted, it only picks out some policies. The policies listed in D.2.3 are those that relate specifically to the matters which have triggered the non-complying rules in

⁴⁰ Submission, p.17

⁴¹ Submission, p.5

⁴² Submission, p.5

the Plan. So, for example, rule C.1.1.22 is a non-complying activity for structures within significant marine areas (e.g. areas of outstanding natural character). Therefore, the logic was that because being in an area of outstanding natural character was the reason (trigger) for the non-complying activity status, then D.2.3 only needed to refer to the relevant RPS policy in policy D.2.3 (Policy 4.6.1 – managing the effects on the characteristics and qualities of natural character, natural features and landscapes). I agree with the submitters that this approach is incorrect.

62. A broad judgement should be made when assessing whether a non-complying activity is contrary to the objectives and policies of a plan. This means all relevant objectives and policies should be considered⁴³. This issue should be resolved if my recommendations are adopted.

Tail wagging the dog

63. The concern raised was that the Plan's approach is inconsistent with established case law, which provides that plan making should begin with objectives for a district or region, rather than with the rules. Fonterra⁴⁴ noted that policies and rules should then be driven from the "top down"⁴⁵ to do otherwise would be to allow the "tail to wag the dog"⁴⁶.
64. Fonterra's concern is illustrated by the statement in the Section 32⁴⁷:

While the RMA (and planning theory) assumes that objectives drive policies and rules, the reality is when developing plans, policies and rules drive objectives. The debate over rules seldom starts with the objectives or policies - it starts with the rules. If the objectives or policies do not match the rules then the objectives or policies are changed.

65. I agree with Fonterra that the RMA directs a top down approach. What the comment in the Section 32 was highlighting is the reality that most people's focus when they engage with a plan (for example as a submitter or an applicant) is with the rules, followed by the policies and then objectives.

⁴³ For example see - *Kuku Mara Partnership (Forsyth Bay) v Marlborough DC EnvC W025/02* and *Clearwater Mussels Ltd v Marlborough DC* [2016] NZEnvC 21

⁴⁴ Submission, p.35

⁴⁵ *Federated Farmers of New Zealand (Inc) v MacKenzie District Council* [2017] NZEnvC 53 at [177].

⁴⁶ *Housing New Zealand Corporation v Auckland Council* [2017] NZEnvC 120, at [21].

⁴⁷ Page 14, Section 1.5.

66. While I concede the absence of objectives is contrary to the direction from the courts that internally plans should be 'top down', the Proposed Plan was developed under the multitude of direction of higher policy documents. In other words, the absence of objectives hasn't meant that the policies and rules have been prepared in a vacuum.

Assisting council to carry out functions

67. Royal Forest and Bird Protection Society NZ⁴⁸ suggested the single objective will not assist the council to carry out its functions in terms of s63.

68. Section 63 states:

63 Purpose of regional plans

(1) The purpose of the preparation, implementation, and administration of regional plans is to assist a regional council to carry out any of its functions in order to achieve the purpose of this Act.

(2) Without limiting subsection (1), the purpose of the preparation, implementation, and administration of regional coastal plans is to assist a regional council, in conjunction with the Minister of Conservation, to achieve the purpose of this Act in relation to the coastal marine area of that region.

69. The judgement of whether Section 63 is being 'met' should not be based on looking at the objective by itself. It does not make sense to look at elements of a plan in isolation to determine whether Section 63 is satisfied. If that were the case, then many policies and rules viewed in isolation would not satisfy Section 63. The provisions in the Proposed Plan work together to achieve the desired outcome. The Proposed Plan is to be viewed as a whole. The submitter provides no evidence that the Plan (as a whole) is not assisting Council with carrying out its functions.

Change to RPS objectives

70. New Zealand Transport Agency⁴⁹ suggested that if the RPS is reviewed/made operative separate to the Regional Plan, the Regional Plan may be left without relevant objectives on which to rely.

⁴⁸ Submission, p.3

⁴⁹ Submission, p.5

71. I agree that the circumstance could arise where the Plan is not consistent with an amended RPS. Having subsequently spoken to the New Zealand Transport Agency, I understand that the concern is a situation where the Plan is inconsistent with the RPS, and given the reliance of the RPS for the direction to the Plan, this direction would be lost. In other words, it would not be clear, what outcomes the Plan was seeking to achieve should the RPS be amended.

72. I have some sympathy with this concern and the inclusion of specific objectives should address it.

Weighting objectives

73. New Zealand Transport Agency⁵⁰ suggested “*the approach is likely to raise issues of ‘weighting’ (i.e. which RPS objectives are more important) where some RPS objectives are specifically referenced within the Plan and others are not*”.

74. I am not clear what the concern is. The Plan does not refer to any RPS objectives. The only reference to RPS provisions is Policy D.2.3 and the reference to some RPS policies for purposes of the 104D non-complying test (which I have recommended be deleted).

Acknowledgement of RPS objectives

75. Dairy NZ⁵¹ submitted that for any user of the Plan there is no acknowledgement of the other 15 objectives sitting in the RPS.

76. I am not clear what the submitter is meaning by this.

Nothing to implement

77. The Minister of Conservation suggested that “*...without identifying objectives, or goals for the plan that relate to the Council functions, the policies and rules have nothing to implement.*”⁵²

⁵⁰ Submission, p.5

⁵¹ Submission, p.21

⁵² Submission, p.68

78. I disagree. The absence of objectives does not mean the policies and rules are prepared in a vacuum. The policies and rules have been developed within the envelope directed by higher policy documents.

Additional objectives

79. Various submitters have requested objectives for specific matters (e.g. regionally significant infrastructure). The recommended objectives in most cases may satisfy these requests.

80. Horticulture NZ⁵³ have proposed two additional objectives – one relates to the nature of resource consent decision making and the second relates to linking the extent of controls in the Plan to the degree of adverse effects. In my opinion, these proposed objectives are not necessary as they largely reflect the requirements of the RMA and good planning practice.

Conclusion

81. While I disagree with many of the points raised by submitters regarding the single objective approach, I accept there is some legal uncertainty about its validity – particularly the requirements for regional plans (Section 67, RMA), the scheme of the RMA and the relevant case law, which point to regional plans including a suite of objectives

82. I am also mindful of the likely cost of continuing to justify the single objective approach. The reality is, as I have mentioned, the effect of the Plan is unlikely to substantively change just because of the addition of objectives and policies which were not included because they were deemed to be adequately addressed in high policy documents. I suspect the continued defence of the approach is likely to require considerable effort and resourcing.

83. I am therefore recommending the Plan include specific objectives and relevant policies from higher policy documents. As outlined in the *Summary of recommendations* section above, the analyses and recommendations for the wording of the specific objectives are addressed in the s42A report relating to the matter addressed by the objective

⁵³ Submission, p.77

84. The recommended objectives are for the most part based on, or are a copy of, the RPS objectives, with the exception of the recommended objectives for water quality⁵⁴. The reasons for using the RPS objectives as a basis for the additional Plan objectives are:
- The Plan provisions (arguably) already implement them (in other words, there is no need to change the Plan provisions because of the objectives)
 - They have been tested through the Schedule 1 process
 - They are specific to the region
 - They cover most of the matters addressed by the Plan.
 - There are submitters specifically requesting their inclusion (specific objectives from the RPS or all of them).
85. As discussed above, the RPS objectives do not address air quality. An additional objective is recommended to cover this matter. The Proposed Plan provisions for these matters (including the recommended changes) implement these objectives.
86. In terms of filling policy gaps, the analyses and recommendations for the wording of the specific policies are addressed in the s42A report relating to the matter addressed by the policy.

Scope for adding the objectives and policies

87. My view is that there is considerable scope to add new objectives and policies.
88. The Auckland Unitary Plan hearings panel provided a helpful discussion on scope in their recommendations report on the Auckland Unitary Plan – refer **Appendix C**.
89. Relating the Auckland Unitary Plan hearings panel discussion to introducing new objectives and policies, there are in my opinion two questions. The first is are there submissions that request their inclusion? Simple answer – yes.
90. There are some submissions generally requesting inclusion of objectives (e.g. AFFCO, Ravensdown and NZTA). There are also many submitters requesting objectives to address

⁵⁴ Refer section “Including water quality objectives in the plan” in the s42A report “Water quality management – general matters”.

specific matters, the combination of which would most likely cover the scope of any likely suite of objectives the Hearing Panel may consider.

91. Similarly, there were a range of submissions requesting the addition of specific policies (e.g. Minister of Conservation and Refining New Zealand) or more general requests to include policies to give effect to high policy documents (e.g. Top Energy and Fonterra). CEP Services Matauwhi Ltd specifically requested the inclusion of a policy (or policies) stating that all relevant policies in national policy statements and the RPS must be considered when implementing the Plan.
92. The second question is would the inclusion of the objectives and policies be a large enough change to mean a person who was not affected by the notified version then find themselves directly affected? I think the answer to this question is no – for three reasons.
93. Firstly, we are dealing with an entire regional plan therefore scope of the plan is wide. It would be hard to see how the scope of the plan would be widened because of the inclusion of the objectives and policies. In other words, it is very unlikely the inclusion of the objectives and policies would result in provisions for matters that are not already covered in the plan. Furthermore, the courts appear to be generous in allowing submissions on an entire regional plan to include provisions on matters not covered by the plan (see for example *Motiti Rohe Moana Trust v Bay of Plenty Regional Council*, 2016, NZEnv 190).
94. Secondly, the inclusion of the objectives and policies is very unlikely to drive changes to the existing Plan provisions beyond the range of changes requested by submitters.
95. Thirdly, given the many primary submissions seeking new objectives and policies, any potential further submitter would have been on notice that such an outcome was possible and if they were concerned about that they could have lodged a further submission either supporting or opposing the primary submission requests.

Structure and layout of the Plan

Order of rules, policies and objectives

96. The main feature of the Proposed Plan structure raised in submissions was having the rules before the policies, and the policies before the objective. Submissions on this included.

- The rules should follow the policies (Bay of Islands Maritime Park Inc)
- The plan order should be objectives, policies then rules (Transpower, Tegal Foods Ltd and Yachting NZ)
- The Plan is well presented and reasonably easy to understand (Herbert P)
- Support for the structure and one combined plan (Bay of Islands Planning Limited, Northport Ltd, Northpower and Top Energy).

97. I am still of the view that the order of the provisions should remain rules, policies then objective(s) for the reasons outlined in Section 1.5 of the Section 32 report. The RMA does not specify the order of a plan to be objective(s), policies then rules. I disagree with Transpower that the objective(s) preceding the policies make it clear how the policies implement the objective – I do not think the order makes any difference in this respect.

98. The Minister of Conservation and Top Energy suggest the provisions applying to the coastal marine area should be identified. I disagree, because:

- It is not a legal requirement,
- I do not see any value for Plan users (Top Energy suggest there are different legal requirements in the coastal marine area, but do not provide any detail about what they are and what relevance they would have to a Plan user), and
- Identifying the coastal marine area provisions for the purposes of the Minister of Conservations sign off is an administrative issue and can be addressed outside the Plan.

Rule bundling

99. Bay of Islands Planning Limited, Carrington Resorts Jade LP and Far North Holdings supported the rule bundling (one rule covering two or more RMA activities)⁵⁵. Northpower recommend an addition to *C Rules* to make it clear that even though the Plan uses a rule bundling approach, separate resource consents will be granted for each of the relevant sections 9 and 12 to 15 RMA matters covered in a rule. I agree and have proposed additional wording along the lines proposed by Northpower.

⁵⁵ Refer page 59 of the *Summary of Decisions Requested* document.

100. I have also recommended amendments to the way the sections 9 and 12 to 15 RMA matters are referenced in each rule. In the notified version, the references were relatively general. My concern is that these provisions may be too general (particularly for permitted activities) and therefore not clear enough about what RMA activities are covered by the rule and what are not. In addition to potential confusion, there is also a risk that people may exploit the rules in a way that was unintended. So, for example, rule C.4.1 permits land drainage and refers to “discharge of contaminants into water (s15(1)(a))”. Someone may be able to argue that the rule allows any type of discharge (e.g. farm dairy effluent) to a drain. For this example, the solution would be to refer to specifically to the discharge of sediment as the specific contaminant of concern. I am of the view that the jurisdiction for the changes comes from clause 16(2), Schedule 1, RMA and the general decision-making powers of clause 10, Schedule 1, RMA

Use of Te Reo Māori

101. Patuharakeke Te iwi Trust Board suggests the Plan should include more Te Reo Māori. Council has recently adopted a policy that it will include Te Reo Māori in its policies and plans. Accordingly, I recommend the inclusion of karakia, mihi whakataki and bilingual chapter headings. These have been written by Abraham Witana (council's Kaiarahi – Tikanga Māori⁵⁶) and members of council's Te Tai Tokerau Māori Advisory Committee.

General submissions on the Plan

More explanation and context

102. Fonterra suggest there needs to be an introductory section in the Plan to provide clarity and context to its relationship with higher planning documents. The Introduction to the plan already provides a description of how the Plan works in relation to higher planning documents. The submitter may wish to provide some proposed wording at the hearing.

103. Dairy NZ request the inclusion of explanations to policies and objectives, suggesting it would be helpful for readers to understand the provisions. I disagree. The reasons for not including explanations is outlined in Section 1.5 of the Section 32 Report.

⁵⁶ Cultural advisor Maori.

Optional plan content

104. Far North District Council requested the inclusion of methods and indicators for monitoring progress towards achieving objectives and compliance with policies. As outlined in the Section 32 report, I believe monitoring methods and indicators should sit outside the plan so they can be flexible. Science and monitoring techniques change, as does the funding to carry out monitoring.

Other general submissions

105. There are several submissions with general requests but with no detail about the specific changes being sought. These submissions include:

- Kepa M, Norris M and Clark R - suggests the Plan should do more to better manage a range of issues.
- Frear A – suggests the Plan should prioritise environmental wellbeing and greater protection for Northland’s soils, waterways and marine environment.
- Miller S - opposed to the whole plan.
- Haititaimarangai Marae 339 Trust – requests the Haititaimarangai Marae Hapu Development Plan be recognised in the Plan
- Hosking G – suggests the Plan should be amended to address the needs of the wider community ahead of the interests of the farming sector.
- Howell J – concerned about sedimentation of marine habitat.
- Mahanga-Nisbet K - suggests the Plan should not proceed because of concerns that regional council practices are racist.
- Patuharakeke Te iwi Trust Board – include suite of objectives and policies to recognise and provide for submitter’s relationship with ancestral lands, water, sites, waahi tapu and other taonga.
- Te Runanga O Ngati Rehia – redraft the Plan to reflect and be consistent with the Ngati Rehia Hapu Environmental Management Plan; build mechanisms into the Plan to ensure Treaty settlement outcomes can be realised by NRC processes and rules.

- Whatitiri Resource Management Unit and Environment River Patrol Aotearoa - objects to the entire Plan and requests that the Northland Regional Council go back to the drawing board and requests the Northland Regional Council employ five Maori RMA practitioners (provided by iwi / hapu) to assist in re-writing Maori and the RMA section of the Plan and to work on the policy overall

106. I am unable to assess the requests without the detail of the specific changes sought.

These submitters may wish to provide more detail at the hearing (for those that want to be heard). However, I am mindful that evidence presented at a hearing cannot expand the scope of a request made in an original submission. In other words, the absence of details of any actual amendments sought to the Plan (the specification of specific relief is required by RMA Schedule 1, sub clause 6(3) and Form 5 prescribed in the Resource Management (Forms Fees and Procedure) Regulations 2003)) may mean that the Panel has no option but to reject these submissions.

107. Hoterene H's submission is in Te Reo Maori. The submitter did not want the submission to be translated and has indicated that they will be presenting at the hearing in Te Reo Maori with an official translator. Until the submission is translated I am unable to respond to it.

108. Johnston J suggests a navigation tool or cross referencing in footnotes to referenced documents. The Plan already includes hyperlinks within the document (including to the maps). Hyperlinks to external documents haven't been included because of the risk of the links changing.

109. Johnston J also suggests that reference be made to criteria or characteristics rather than reference to another document. Generally, referring to a specific document (as opposed to criteria or characteristics) is more definitive (which is particularly necessary for rules) and avoids repeating sometimes large amounts of text.

110. Johnston J also suggests that all relevant reports used to inform and support the Plan should be collated by subject. The Council's website already includes such a page - <https://www.nrc.govt.nz/Your-Council/Council-Projects/New-Regional-Plan/technical-reports/>

111. Minewatch Northland would like the Plan to include provisions to prohibit all hard-rock mining. The submission does not include any specific provision wording (for example the actual wording of any new definitions, rules or policies addressing nor an analysis of the

merits of any such new provisions). It is difficult for me to consider the request in the absence of this information.

112. The New Zealand Defence Force suggest that all references to NZ standards should be italicised. I agree.

Policies D.2.1 – D.2.5

Submissions and analysis

Policy D.2.1 – Rules for managing natural and physical resources

113. Policy D.2.1 was intended to fill any gap where there was no clear link between a policy and a rule as required by s67(1) (rules must implement policies). There were various submissions on the policy across the spectrum.
114. While the inclusion of a range of new policies reduces the need for D.2.1, I still believe there is merit in including it. Policy D.2.1 provides direction to the principles of the rules and pulls through the direction given by policy 6.1.1 of the RPS.
115. I do not agree with the requests for amendments to the policy as I do not think they add to or provide any greater clarity to it, and the wording as recommended is consistent with Policy 6.1.1 of the RPS.

Policy D.2.2 - Social, cultural and economic benefits of activities

116. Over 20 submitters supported Policy D.2.2 – mainly infrastructure providers and commercial interests. Four submitters sought minor amendments. Northland Fish and Game and the Royal Forest and Bird Protection Society NZ sought the policy be deleted unless it is balanced by the inclusion of policies which provide regional direction on resource management issues and give effect to the RPS and NZCPS. CEP Services Matauwhi Limited sought the policy be deleted outright, suggesting “*this policy is essentially an incomplete and misleading restatement of part of the definition of ‘sustainable management.’*”⁵⁷

⁵⁷ Submission, p.15

117. The purpose of Policy D.2.2 is to make it clear that the benefits of activities must be considered. As Fonterra expressed in their support for the policy - “*the positive effects ... of proposed activities can commonly be overlooked and plans often focus too heavily on negative impacts*”⁵⁸. I do not agree with CEP Services Matauwhi Limited – the policy is not seeking to restate s5 of the Act – it is just ensuring that positive effects are considered. I recommend it be retained.

Policy D.2.3 - Application of policies in the Regional Policy Statement for Northland to non-complying activities

118. Policy D.2.3 is addressed in the section above *Objectives necessary for non-complying gateway test*. Given the recommended new objectives and policies, policy D.2.3 is not required and I recommend its deletion.

Policy D.2.4 Resource consent duration

119. There were many submissions on Policy D.2.4, mostly seeking amendments and a few in support. No submission sought the policy be deleted. There were various suggested amendments.

120. Refining NZ, GBC Winstone and Top Energy made the point that there are other mechanisms to address some of the matters (e.g. certainty of effects) covered by policy D.2.4, such as the ability to review consent conditions (s128) and adaptive management conditions. I agree that these are relevant, but I do not think it is necessary to recognise these in this policy. Using the example of clause 4) ‘certainty of effects’, a decision maker in applying the criterion would only be considering the remaining uncertainty of effects, having already factored in the consent conditions which may for example set out an adaptive management regime.

121. The following table addresses each clause in Policy D.2.4 and my analysis of the submissions:

Clause	Analysis
1. Security of tenure for investment	CEP Services Matauwhi Ltd (CEP) was the only submitter that sought this clause be deleted and no submissions sought changes. CEP suggested “ <i>It is unreasonable and not in accord with good resource</i>

⁵⁸ Submission, p.25

	<p><i>management practice to include the consideration of quantum of investment when setting the term of a resource consent.</i>⁵⁹ I disagree. The courts have accepted that the investment in the activity is a valid matter for considering consent duration - see for example <i>Te Rangatiratanga o Ngati Rangitahi Inc v Bay of Plenty RC</i> (2010) (HC), <i>Crest Energy Kaipara Ltd v Northland RC</i> (2011) (EC), and <i>PVL Proteins Limited and another v The Auckland Regional Council</i> (2001) (EC).</p> <p>I recommend the clause be retained.</p>
<p>2. Aligning expiry dates with other consents</p>	<p>Fonterra and Tegal Foods Ltd sought this clause be deleted. Other submissions sought clarification that the clause only apply when there was a benefit of aligning expiry dates. Balance Agri-Nutrients Limited also suggested that the clause only apply when there is an environmental benefit.</p> <p>The clause is for two purposes – environmental and administrative. There are situations (e.g. water takes) where having resource consents expiring at the same time allows for better sustainable management of the resource (e.g. to deal with cumulative effects). Also, it can be more administratively efficient to have a staggered schedule of expiry dates for different locations, particularly where there are many similar activities e.g. small coastal structures.</p> <p>The case <i>Curador Trust v Northland Regional Council</i> (2006) (EC) looked at the issue of aligning the duration of a consent for a boat shed with the expiry date of adjacent boat sheds. The Court stated that aligning consent durations was acceptable for (in this case) administrative efficiency - “... <i>administrative efficiency is an element of sustainable management in terms of the Act, being managing the use of physical resources in a way and at a rate that recognises the various interests under the Act</i>”⁶⁰</p> <p>I recommend that the clause be retained.</p>
<p>3. Reasonably foreseeable demands for the resource</p>	<p>The clause reflects that many of the resources the Proposed Plan regulates are ‘public’ assets, and that the way that the public values these assets may change over time. The clause is similar to RPS Policy 4.8.3(c) which relates to consent duration for space in the common marine and common area.</p> <p>Fonterra, Irrigation New Zealand and GBC Winstone sought the clause be deleted. They suggest it is subjective and may result in unjustly shortened consent duration if the demand does not arise.</p> <p>There is precedent to consider the future - in the case <i>PVL Proteins Ltd v Auckland Regional Council</i> (2001) (EC), one of the factors the Court considered in determining the consent duration for an air discharge in the Auckland urban area was the possible changes to the surrounding areas.</p>

⁵⁹ Submission, p.16

⁶⁰ Paragraph 32.

	<p>While there is inherently a judgement call, any shortening of a resource consent duration of the basis of this criterion would need to be justified by evidence. Also, the inclusion of the words “<i>reasonably foreseeable</i>” gives some direction about the accuracy of the evidence.</p> <p>I am still of the view that it is legitimate sustainable management matter to be considered when determining resource consent duration, and should therefore be retained.</p>
4. Certainty of effects.	The submissions (e.g. Refining NZ) on this clause focussed on the addition that other mechanisms (e.g. s128 review of consent conditions) should be also factored. See my comments in previous paragraph.
Additional clauses	<p>Various additional clauses were suggested, particularly in relation to re consenting, I agree with the rationale (though not necessarily the suggested wording) of many of them as they address relevant sustainable management matters, and therefore I have recommended that they be included as follows:</p> <ul style="list-style-type: none"> • Whether the activity is associated with regionally significant infrastructure • Extent of existing investment (re consenting) • Compliance with resource consent conditions (re consenting) • Compliance with relevant guidelines and codes of practice (re consenting) • Adoption of good management practice (re consenting) <p>Sweetwater Farms sought an addition of a clause stating that consent durations for irrigation water takes be a minimum of 20 years due to the level of investment required. There is no statutory or policy direction to set minimum consent durations. Also, the issues regarding level of investment is equally applicable to many other activities.</p>

Policy D.2.5 – Recognising community and tangata whenua values

122. Policy D.2.5 attracted nine submissions – three in support, one to delete (GBC Winstone) and the remainder seeking amendments.

123. Far North District Council sought the addition of a third clause – to have regard to any relevant iwi partnership agreement. I assume it was meant to be iwi participation arrangements (Mana Whakahono a Rohe), which were introduced in recent changes to the RMA. I am not clear how an iwi participation arrangement would be relevant to a resource consent process given that their purpose is for facilitating improved relationships between councils and tangata whenua for plan development processes. As I understand, they are not likely to be a document that set out tangata whenua resource management policy.

124. In respect to D.2.5(1), GBC Winstone are concerned about the uncertainty of referring to “...*external and unknown documents*...”. I am not convinced by GBC Winstone’s concerns.

Quite obviously there is uncertainty, but this is muted by the requirement that the document has been through a statutory process and that decision-makers should have 'particular regard to' the document (which means it could be discounted if there is good reason to).

125. Haititaimarangai Marae 339 Trust and Royal Forest and Bird Protection Society NZ Trust requested that there be more detail about the values of the local community and tangata whenua (D.2.5(2)), while GBC Winstone suggested that the clause is not needed, as it repeats in generic terms, matters which are already included in the Plan. I am in two minds about the ongoing inclusion of this clause. Its purpose was to make sure that the values of the local community and tangata whenua were in the spotlight of resource consent decision makers – which I still think has merit. However, I accept the generality of the clause may mean it adds little value to the resource consent process. On balance, I recommend it be deleted.

Recommendations

126. To summarise I recommend:

- Deleting Policy D.2.1 *Rules for managing natural and physical resources*
- Retaining Policy D.2.2 *Social, cultural and economic benefits*
- Deleting Policy D.2.3 *Application of policies in the Regional Policy Statement for Northland to non-complying activities*
- Retaining Policy D.2.4 *Resource consent duration* and adding clauses to recognise:
 - Whether the activity is associated with regionally significant infrastructure
 - Extent of existing investment (reconsenting)
 - Compliance with resource consent conditions (reconsenting)
 - Compliance with relevant guidelines and codes of practice (reconsenting)
 - Adoption of good management practice (reconsenting)
- Retaining Policy D.2.5, with the deletion of “*have regard to the values of the local community and tangata whenua.*”

Evaluation of recommended changes

127. Section 32AA, RMA requires an evaluation of proposed changes to the Plan. The recommended changes to the policies, compared to the as-notified wording of the policies, are considered to:

- Be of a minor scale and significance;

- Improve the efficiency and effectiveness of the policies to achieve the objectives; and
- Result in a net benefit.

Maps (general submissions)

128. This section only addresses the submissions in “*General submissions on the Plan maps*” starting on page 607 of the Summary of Decisions Requested which are general in nature. Submissions on specific maps are addressed in the relevant S42A report on that matter. For example, if the submission is requesting amendments to a zone in the coastal marine area, this is addressed in the S42A report: *Coastal structures*.

Submissions and analysis

129. Federated Farmers requested the inclusion of a process to ground truth maps. The submission was made on the basis that they had not heard from any of their members about the accuracy of the maps. I am unsure what such a process may look like so am unable to respond to this.

130. Johnston J would like the Waitangi Bridge and the drive from Te Tii Marae to the Bledisloe Lookout added to the map of “*Priority Areas for Improving Walking and Cycling*” and the route as regionally significant infrastructure. The map of “*Priority Areas for Improving Walking and Cycling*” and what constitutes regionally significant infrastructure has already been determined by the Regional Policy Statement (refer Appendix 3 of the Regional Policy Statement). There is no scope to change these in the Plan.

131. Johnston J also requests the addition of a map in the Proposed Plan to show where the public has access, and where/how the Proposed Plan intends to improve and enhance public access to the coast and marine environment, as well as to the margins of rivers and lakes. Public access to the coastal marine area is not an issue I think warrants mapping in the Proposed Plan. There are very few activities regulated in the Plan that impact on public access to the coastal marine area or the margins of rivers and lake – it is more an issue for district plans.

132. King G questions what the authoritative source of the maps is, and if they are the computer maps then what precautions are there to ensure the maps do not vary when using different computers. The GIS maps are the authoritative source. Council’s GIS team confirmed that

while there may some differences in how colours appear on different computer screens, the data is based on locations in space which have specific coordinates so the spatial extent of the mapped areas does not change regardless of the computer or device it is viewed on.

133. King G also questions whether just having GIS maps is inconsistent with the principle of allowing the public unfettered access to the law. The GIS maps (and the rest of the Proposed Plan) is available for viewing free of charge at any public library in Northland and at all regional council offices. Printed copies of maps are available and can be provided according to council's charging policy (up to 20 pages printed free of charge). Lastly, Section 35 sets out the requirements for councils regarding the making available of plans to the public. It is only required to be kept "...*reasonably available at its principal office...*"⁶¹.

Recommendation

134. My recommendation is that there be no changes in response to the submissions assessed in this section.

The Section 32 report

135. Marsden Maritime Holding, Royal Forest and Bird Protection Society NZ and Ravensdown Limited raised concern about the basis of the Section 32 assessment given the lack of objectives.

136. The Minister of Conservation's submission states⁶²:

[8.] Section 32(1)(a) requires that an evaluation report must examine the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of the RMA. An objective that simply repeats section 5, cannot achieve section 5 and it renders it meaningless. As the section 32 report states, "We decided to (essentially) not include objectives in the regional plan" (at page 14). The comments in the s 32 Report that section 5 is meaningless as an objective in a plan are reinforced by the Supreme Court's decision in King Salmon:

Section 5 is not intended to be an operative revision, in the sense that it is not a

⁶¹ Clause 3, Section 35, RMA.

⁶² Page 67 of the Minister of Conservation's submission

section which particular planning decisions are made; rather, it sets out the RMA's overall objective.

[9.] Additionally, s 32(1)(b) requires an evaluation report to examine whether the provisions in the plan are the most appropriate way to achieve the objectives. In light of the absence of objectives, the management options in the NRP have been assessed against a set of "high level objectives and measures." This does not meet the s 32(1)(a) requirement as "objectives" is defined in that section to mean for a plan that contains or states objectives, those objectives (s 32(6)).

137. Yachting NZ and North Port Ltd suggest the Section 32 analysis is flawed as it does not address the requirements of the Act, specifically:

- The extent to which the objectives (in this case one only) are the most appropriate way to achieve the purpose of the Act; and
- Whether the provisions (policies and rules) are the most appropriate way to achieve the objectives, including an assessment of their efficiency and effectiveness.

138. I do not agree. I accept that the Section 32 report could have been clearer about how it satisfies the requirements of the RMA, but I do not agree that it is "fundamentally flawed".

139. In this section, I will work through the requirements of Section 32 which Yachting NZ suggest have not been met and demonstrate why I believe the Council has met these requirements.

140. The relevant parts of Section 32 are:

32 Requirements for preparing and publishing evaluation reports

(1) An evaluation report required under this Act must—

(a) examine the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of this Act; and

(b) examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by—

(i) identifying other reasonably practicable options for achieving the objectives; and

(ii) assessing the efficiency and effectiveness of the provisions in achieving the objectives; and

(iii) summarising the reasons for deciding on the provisions; and

Evaluating the objective - 32(1)(a)

141. From MFE's *A Guide to Section 32 of the Resource Management Act 1991*:

To date, s32 case law has interpreted 'most appropriate' to mean "suitable, but not necessarily superior". This means the most appropriate option does not need to be the most optimal or best option.

142. The Section 32 report (section 1.5) outlines the argument for the objective. While it could have been more explicit, this is the s32(1)(a) evaluation of the objective. The evaluation considers the option of including a traditional suite of objectives vs the one objective. It concludes that the single objective, for the purposes of the Plan (a streamlined rule book and guide to consents decision making) is the best approach i.e. it is 'the most appropriate' way to achieve the purpose of the Act. (Note that staff now no longer agree with that conclusion and have proposed the inclusion of a suite of objectives).

143. The RMA does not say how objectives are to be evaluated to determine what is the most appropriate – a point echoed by the MFE guidance.

Evaluating the policies and rules

144. The Section 32 report examines the policies and rules in packages called "management options". A packaging approach was used because it recognises that the solutions to the problem, opportunity and/or requirement generally require a package of interrelated policies and rules. This is a common approach.

145. Rather than evaluating the management options against the objective, it evaluates them instead against the high-level objectives. It would be meaningless to test the management options against the single objective. The high-level objectives are a distillation of the objective to the management option being considered. The high-level objectives drill down to the important values being traded off when comparing the management options.

146. Section 1.6 of the Section 32 report sets out the approach for how the management options were evaluated against the high-level objectives.

147. There may be an argument that submitters cannot challenge the high-level objectives because they were not in the Plan. Under Clauses 5(2) and 6(1) of Schedule 1 a person

may make a submission on the Plan but not on the Section 32 Report. Submitters have therefore not had an opportunity to submit on the high-level objectives that the policies and rules of the Plan have been examined against.

148. However, submitters can challenge any provision on the basis that section 32 has not been complied with (s32A). So, a submitter may challenge the high-level objectives on the basis that they do not represent the necessary values required to assess all the relevant cost and benefits (efficiency) in concluding a set of policies and rules (management option) is the 'best' option – that is, section 32 has not been complied with.
149. I accept that the Section 32 report does not do a good job of explaining how the approach used for evaluating the policies and rules meets the requirements of Section 32. However, I do not believe this failing means the Section 32 requirements have not been met.
150. I also note that the Hearing Panel has no ability to go back and amend the Section 32 Report in any case. Rather, the Hearing Panel's role is to undertake a section 32AA assessment of any amendments they recommend to the Plan arising from their consideration of the submissions. To assist the Hearing Panel, submitters should therefore focus on section 32 matters that support any amendments to the Plan requested in their original submissions, but that are not supported by the section 42A report authors.

General submissions on rules

Submissions and analysis

151. There were various submissions that generally related to the rules (refer submissions starting page 59 of the *Summary of Decisions Requested*).
152. Some of the submission points do not provide any reasoning or are so general that I am unable to assess them. Also, some of the submission points captured in this section of the *Summary of Decisions Requested* are addressed in the other s42A reports.
153. There were some submissions that suggested generic changes to the Proposed Plan:
- CEP Services Matauwhi Ltd requested that all controlled activity rules be changed to restricted discretionary activity rules.

- The New Zealand Transport Agency were concerned about the large number of rules (mainly permitted activities) that require Council notification of the commencement of the activity.
- Ravensdown Limited suggested that rather than defaulting to a discretionary activity where a permitted activity condition is not complied with, it would be more appropriate to default to a restricted discretionary activity, particularly when the effects of the activity are known, and the Council's discretion can properly be restricted to the permitted activity condition not met.

154. I do not think it is appropriate to consider and make recommendations on these generic proposed changes. Whether these suggested changes have merit are better considered at the individual rule level.

155. The New Zealand Transport Agency also suggested there be a specific statement in the Proposed Plan that there are no assessment criteria. I am not sure why this is necessary. A quick perusal of the contents and/or word search of the Plan would confirm that there are no assessment criteria.

156. They also go on to suggest including references in rules to the relevant policies for the rule. While there may be some rules where there is a discrete set of relevant policies, for other rules there may be a wide range of applicable policies and there is a risk that a relevant policy might be left of the list. Accordingly, I do not agree with the proposed changes.

157. Top Energy and Northpower suggested making it clear that an application under a bundled rule would still result in separate consents being granted. Transpower also requested the addition of text be added to the Proposed Plan highlighting the existence of national environmental standards and the Plan's relationship with the standards. I agree with both suggestions, and recommend text to that effect be added at the start of the rules section of the Proposed Plan. The text is based on the text in the 'National Directions Instruments Chapter' in the *Draft National Planning Standards*, Ministry for the Environment, 2018.

Submissions on G Administrative matters

158. This section of the Proposed Plan includes:

- G.1 Cross-river coastal marine area boundary
- G.2 Statutory acknowledgements

- G.3 Financial contributions
- G.4 Coastal occupation charging

Submissions and analysis

159. There were no submissions on *G.1 Cross-river coastal marine area boundary*.

160. There were two submissions seeking changes to *G.2 Statutory acknowledgements*. The Landowners Coalition Inc would like the section to be deleted. It is a legal requirement to include statutory acknowledgments in the Plan and so we have no choice but to retain this section. King G suggests amending the second paragraph to make it clear that Māori (as well as the Crown) are capable of breaking the terms of the Treaty of Waitangi. I do not think that is relevant. The paragraph is about Crown and Māori negotiations over Māori grievances – it is not about concerns the Crown may have with Māori acting contrary to the principle of the Treaty of Waitangi.

161. There were several submissions on *G.3 Financial contributions* which can be grouped as follows:

- Delete (Fonterra, GBC Winstone and Top Energy)
- Retain (Northport Ltd and New Zealand Transport Agency)
- Make minor amendments (Northland Fish & Game and Minister of Conservation)
- Amend to include an independent review mechanism to hear objections to the amount of financial contribution determined by the Council (Landowners Coalition Inc)
- Amend to provide certainty as to the circumstances for when, and to what value, a financial contribution will apply (Refining NZ).

162. I am of the view that *G.3 Financial contributions* should be deleted. As of 18 April 2022, there will no longer be the ability to require financial contributions⁶³. If *G.3 Financial contributions* is deleted from the Plan, council is still able to require a financial contribution under the existing operative regional plans⁶⁴, until the Proposed Plan becomes operative. It is likely the Proposed Plan will not become operative until late 2019 / early 2020 at the earliest, assuming there will be appeals to the Environment Court. This means there will probably be at most only a two-year window where *G.3 Financial contributions* would be of

⁶³ Resource Legislation Amendment Act 2017.

⁶⁴ Section 108(10), RMA only allows a financial contribution if it is in accordance with the purposes specified in the plan or proposed plan. All three existing regional plans have section setting out the purposes for financial contributions.

any real value. I have also discussed the matter with the Councils Consents Manager and his advice is that he cannot recall in the last 10 years a consent which has required a financial contribution. The two submitters supporting *G.3 Financial contributions* did not provide reasons for their support.

163. There were seven submissions on *G.4 Coastal occupation charging*. Five of them supported the Plan not including a coastal occupation charging regime. The Ruakaka Parish Resident and Ratepayers Association wanted clarification about what a coastal occupation charging regime may entail – which is not relevant for deciding on the provision. Upperton T suggests that occupiers should pay for the benefit of using public space. This reason was already considered in the Section 32 (refer 8.1.3 Coastal occupation charging). I recommend section *G.4 Coastal occupation charging* be retained as notified.

Submissions on matters not included in the plan

General

164. There were many submissions requesting a variety of provisions to be added to the Plan on matters that are not addressed in the Plan. The most common request is for the inclusion of provisions addressing genetically modified organisms. There were also other submissions requesting that council carry out a wide range of actions outside the Plan.

165. The submissions requesting provisions addressing genetically modified organisms are not addressed in this report as they will be heard at a separate hearing involving all regional councillors.

166. Many of these submissions are deemed to be outside the scope of the matters the Plan can legally address. This means the Hearing Panel cannot consider these submissions. Such submissions include requests for:

- Provisions that are outside the functions of the regional council (S30, RMA)
- The council to carry out actions (e.g. funding, research, monitoring, enforcement, advocacy or physical works)

167. Seven submitters raised a variety of concerns about the Marine Pathways Plan (a plan developed by Council under the Biosecurity Act 1993) and the charges Council is imposing

to contribute to the costs of its marine pest work⁶⁵. All these submissions are outside the scope of the Plan.

168. All the submissions in section *K.3 Other* in the *Summary of Decisions Requested* appear to be outside the scope of the Plan or it is unclear what changes are sought for the Plan, with the following exceptions:

- The Plan should identify high and outstanding natural character of rivers, lakes, wetlands and their margins (CEP Services Matauwhi Limited). This issue is addressed in the s42A report: *Significant natural and historic heritage*.
- Prohibit toxic operations above vulnerable aquifers (Hicks M). The submitter does not provide any proposed provisions and it is not readily apparent what the provisions might be, so I am unable to assess the request.
- Protect the Aupouri Aquifer (Nikora-Kerr K). This issue is addressed in the s42 report: *Allocation and use of freshwater*.
- The Plan should provide for a purpose-built oyster industry loading facility on the Kawakawa river (NZ Oyster Industry Association). The submitter does not provide any proposed provisions and it is not readily apparent what the provisions might be, so I am unable to assess the request.
- Classify Mercury Mine at Puhipuhi as “potentially contaminated land”⁶⁶ (Puhipuhi Mining Action Group). The mine already meets the definition of “potentially contaminated land” and the rules in section C.6.8 *Contaminated land* apply.
- Do not allocate more ground water to commercial sector on Aupouri Peninsula (Wagener C, C and J). This issue is addressed in the s42 report: *Allocation and use of freshwater*.
- The Plan to address the effects of acid sulphate soils (Whangarei District Council). This issue is being addressed in the s42A report: *Acid sulphate soils*.

⁶⁵ Refer page 633 of the Summary of Decisions Report.

⁶⁶ Submission also requests inclusion of a policy directing the council liase with Department of Conservation to investigate contamination – which is outside of scope of the Plan.

- Amend the Plan to include policies that take into account the effects of climate change in planning, particularly in relation to activities in the coastal marine area and natural hazard management – this is discussed in greater detail below.
- Incorporate an outline plan for the refinery (Refining NZ). Refer to the following section.

Refining New Zealand – proposed outline plan

Submission and response to Minute 1

169. As part of its submission (attached as Annexure E to their submission), Refining NZ included a draft outline development plan. It sets out a suite of rules to manage the company’s operations at its Marsden Point facilities and the part of its 170km fuel pipeline within the Northland Region. The provisions cover:

- Structures in the CMA;
- Maintenance dredging and disposal;
- Capital dredging and disposal; and
- On-site activities including discharges to land, water and air; water takes; and land disturbance activities.

170. Refining NZ sought that these rules form a separate section of the Proposed Plan.

171. In response to Minute 1 issued by the Hearing Panel, Refining NZ provided a draft Section 32 analysis of the draft outline development plan. For the purposes of this section I will refer to the draft outline development plan as the “Refining NZ rules section”.

Analysis and recommendation

172. My analysis is focussed on the general request to include a Refining NZ rules section. The merits of specific rules are discussed in the relevant S42A report (e.g. structures in CMA rules addressed in S42A report: *Coastal structures*).

173. My summary of Refining NZ’s rationale for the Refining NZ rules section is:

- Refining NZ’s operations are unique and complex.

- Not having a standalone set of rules may result in unnecessary consenting requirements and the inappropriate management of environmental effects.
- It reflects Refinery NZ's status as nationally and regionally significant infrastructure.

174. In my opinion whether there should be a separate Refining NZ rules section is more a plan structure issue. It would only be necessary to have a standalone rule section if it were a more efficient and effective way to present the rules in the Plan e.g. if there were many rules specific just to Refining NZ. However, my understanding of the recommendations in response to the specific rules requested is that there are few changes recommended that are specific to Refining NZ's activities, and they are adequately accommodated in the current rule structure.

175. The Section 32 provided by Refining NZ indicates that a Refining NZ rules section is the best option. I think the Refining NZ Section 32 overemphasises the value of a standalone rules section vs the current rule structure. The structure of the rules does not change the merits of having rules particular to Refining NZ's activities, the extent to which the refinery is recognised, or the balance between environmental values and economic costs. The Refining NZ Section 32, in my opinion also over emphasises 'plan complexity', suggesting that the ability for Refining NZ to find the rules in the plan that apply to them is a fundamental matter to be considered when assessing whether there should be a standalone rules section or not. Refining NZ is no different to any other person or business in this regard and therefore I do not believe that making the Plan easier for Refining NZ to navigate should be a determinative factor.

176. Refining NZ point to the outline development plan for the Tauranga Port in the Proposed Bay of Plenty Regional Coastal Environment Plan (Bay of Plenty Plan) as support for the Refining NZ rules section. The outline development plan shows existing and planned developments in the coastal marine area. The planned development in the outline development plan is recognised in some policies and in a few rules. Notably, there is no standalone rules section for Tauranga Port's activities.

177. Most (arguably all) regionally significant infrastructure has unique characteristics. If a separate rule section is provided for Refining NZ (on the basis that it is regionally significant

infrastructure and is unique) then I think many other regionally significant infrastructure providers⁶⁷ could argue a similar case.

178. My recommendation is that the Plan does not include a separate Refining NZ rules section.

Climate change

(Michael Day is the author of this section)

Submissions

179. Five submitters (Patuharakeke, Far North District Council, CEP Services Matauwhi Limited, Johnston J and Ajani S) have all requested that the Plan is amended to include policies that consider the effects of climate change in planning, particularly in relation to activities in the coastal marine area and natural hazard management.

Analysis and recommendation

180. I consider that there are compelling reasons as to why a climate change specific policy should be included in the Proposed Plan for Northland:

- it is a specific requirement to consider the effects of climate change under section 7 of the RMA,
- the New Zealand Coastal Policy Statement includes specific policies on the need to consider the effects of climate change⁶⁸and
- the Regional Policy Statement for Northland also has specific guidance on the requirement to consider the effects of climate change.

181. The Proposed Regional Plan is required to 'give effect' to these higher order policy documents. As such, I recommend amending the Plan to include a new policy that addresses the effects of climate change when considering resource consent applications. I consider that this policy should be in section D.2 (General Policies) of the Proposed Plan, in recognition of the need to consider the effects of climate change on a range of resource consent applications.

⁶⁷ For example, the national grid, electricity generation facilities, wastewater trunk lines and treatment plants, the state highway network and airports.

⁶⁸ Refer to Policies 3 and 27.

Definitions (general submissions)

182. Submissions on definitions specific to a subject matter are addressed in the relevant S42A report. Refer to **Appendix B** for a reference guide showing the S42A report each definition is addressed in.

RMA definitions

183. There were several submitters requesting the addition of definitions from the RMA, such as:

- Coastal water (National Institute of Water and Atmospheric Research Limited)
- Foreshore (Whangarei District Council)
- Water (National Institute of Water and Atmospheric Research Limited and Northland Fish and Game)
- Water body (Northland Fish and Game)
- All definitions from RMA (King G)

184. The Proposed Plan as notified did not include any definitions already included in the RMA. I recommend this continues as it is not necessary and it could result in confusion if the Proposed Plan definition changes.

“Authorised”

185. The term “authorised” is used throughout the Proposed Plan. It attracted four submissions – three⁶⁹ sought amendments and one (Royal Forest and Bird Protection Society NZ) supported the wording as notified.

186. Horticulture NZ suggested the addition of a clause that would explicitly refer to permitted activities. I do not think this is necessary. The definition captures permitted activities with clause 2) “*a rule in a regional plan as well as a rule in a proposed regional plan for the same region (if there is one)*”. These are the same words as used in the RMA (see sections 12-15).

187. Northpower suggested the addition of some words to capture structures that were authorised at the time of their construction. It is not clear why this would be necessary.

⁶⁹ Top Energy, Horticulture NZ and Northpower.

Northpower's concern appears to be with permitting their structures in the coastal marine area and in freshwater. The effect of the proposed amendments would not change the effect of the rules permitting existing structures in the coastal marine area (Rule C.1.1.1) and in freshwater (Rule C.2.1.4).

188. Top Energy proposed the addition of a clause – “*that existed prior to 30 June 2004*”. Their reasons relate to the permitting of coastal structures. The term “authorised” is used in many rules (not just coastal structures) therefore if the 2004 date were included it would need to be amended to apply only to coastal structures. However, I do not agree with the proposed addition. The 20 June 2004 date is used in Rule C.1.1.1 as a line in the sand to permit a range of minor structures. Larger structures (generally) require a resource consent. The addition of the proposed clause to the definition will conflict with this approach and create inconsistency between the rules. If the change sought by Top Energy was made, a large existing structure, which requires but does not have resource consent could be, for example, reconstructed as a permitted activity under Rule C.1.1.7. In other words, the structure would not be authorised for its ongoing existence but it could be reconstructed as a permitted activity.

189. I recommend there be no change to the definition of “authorised”.

“Property” and “Other property”

190. There were six submitters on the definition of “property”. The Oil Companies supported the definition while the other submitters sought changes to:

- Confirm that “property” includes district council infrastructure (Far North District Council)
- Either delete reference to adjacent land in the same ownership or include an area limit - so that larger sites in the same ownership are not prejudiced (MLP LLC, Waiaua Bay Farm Ltd and Landcorp Farming Limited).
- Delete reference to adjacent land in the same ownership (Mace C R)

191. The only change sought for the definition of “other property” was as follows:

- 1) *Means any land or buildings, or part of any land or buildings, that are:*
 - a) *not held under the same allotment, or*
 - b) ~~*not held under the same ownership, and*~~
- 2) *includes a road.*

(MLP LLC and Waiaua Bay Farm Ltd)

192. New Zealand Transport Agency supported the definition of “other property” as notified.
193. The term “property” and “other property” are used throughout the plan. They are sometimes used in the context of allocating a right (e.g. a water takes per property) or as a way of regulating effects (e.g. effects beyond the boundary of the property are XYZ). It means that care needs to be taken in amending the definitions as it may have far reaching consequences. I suspect that the submitters concerns come from the use of “property” and “other property” as an allocation of a right. If the concern has merit, then it would be better to address it in the relevant rule(s).
194. Mace C R’s suggested deletion of “property” stems from concerns with the mooring rules. I understand that staff are recommending the removal of the reference to “property” in the mooring rule that was of concern to Mace C R.

Adding ‘benefits’ to restricted discretionary activity rules

195. It came to our attention (not through submissions) that to consider the positive effects of an activity which is a restricted discretionary activity, then the positive effects need to be listed as a matter of discretion.
196. S87A(3) of the RMA says:
- (3) If an activity is described in this Act, regulations (including any national environmental standard), a plan, or a proposed plan as a restricted discretionary activity, a resource consent is required for the activity and—*
- (a) the consent authority’s power to decline a consent, or to grant a consent and to impose conditions on the consent, is restricted to the matters over which discretion is restricted (whether in its plan or proposed plan, a national environmental standard, or otherwise); and*
- (b) if granted, the activity must comply with the requirements, conditions, and permissions, if any, specified in the Act, regulations, plan, or proposed plan.*

197. While the caselaw is clear that a restricted discretionary activity can only be declined based on adverse effects within the envelope of the matters of discretion, it is not so clear about how the positive effects of a proposal are to be considered. My conclusion is that if there are no positive effects listed in the matters of discretion, then a decision maker could not consider these - and this may lead to an application being declined where it may otherwise be granted if the positive effects could have been considered – and this is clearly not the intention.
198. The resolution is to add positive benefits to the restricted discretionary activity rules – this could be specific effects or a general statement. I favour a general statement as it means there is no risk of missing a relevant positive effect and I do not believe there is any legal or policy reason why it could not be a general statement. I am of the view that the jurisdiction for the change comes from clause 16(2), Schedule 1, RMA and the general decision-making powers of clause 10, Schedule 1, RMA⁷⁰

Recommendation

199. I recommend the inclusion of “The positive effects of the activity” (or words to that effect) to be added as a matter of discretion to all restricted discretionary activity rules.

⁷⁰ Amendments to the wording that do not alter the meaning or effect of a rule are permissible, even though not directly in response to submissions, see *Foodstuffs (Otago Southland) Properties Ltd v Dunedin CC* (1993) 2 NZRMA 497.

Appendix A - Authors of Section 42A Reports

The authors of the Section 42A reports are:

Author	Reports
Ben Lee	<ul style="list-style-type: none"> • <i>Aquaculture</i> • <i>General approach</i>
Jon Trewin	<ul style="list-style-type: none"> • <i>Acid sulphate soils</i> • <i>Significant natural and historic heritage</i> • <i>Regionally significant infrastructure, renewable energy and economic activity</i>
Michael Payne	<ul style="list-style-type: none"> • <i>Air quality</i> • <i>Agrichemicals</i> • <i>Contaminated land</i> • <i>Moorings and anchorage</i> • <i>Solid waste</i>
Ben Tait	<ul style="list-style-type: none"> • <i>Allocation and use of fresh water</i> • <i>Earthworks, land preparation, vegetation clearance and bores</i> • <i>Livestock access to waterways and the coastal marine area</i> • <i>Other discharges of contaminants to land and water</i> • <i>Stormwater discharges</i> • <i>Wastewater discharges</i> • <i>Water quality management – general matters</i>
Justin Murfitt	<ul style="list-style-type: none"> • <i>Catchments</i>
James Griffin	<ul style="list-style-type: none"> • <i>Mangrove management</i> • <i>Marine pests</i> • <i>Wetlands, beds of lakes and rivers, damming and diverting water</i>
Michael Day	<ul style="list-style-type: none"> • <i>Coastal structures</i> • <i>Coastal reclamations</i> • <i>Land drainage and flood control</i> • <i>Dredging, disturbance and disposal in the coastal marine area</i> • <i>Re-building of materially damaged or destroyed buildings</i>
Keir Volkerling	<ul style="list-style-type: none"> • <i>Tangata Whenua</i>

Ben Lee

I work as the Policy Development Manager for the Northland Regional Council (regional council). I have a Master of Science (Environmental Science) degree with first class honours from the University of Auckland.

I first started working at the Northland Regional Council in 2000. I worked for about four years (in two separate stints) as a Coastal Consents Officer, where my role was to process resource consent applications in the coastal marine area. In 2005, I started working for the Bay of Plenty Regional Council as an Environmental Planner, involved in aquaculture policy development,

preparing non-statutory strategies and the review of the Bay of Plenty Regional Coastal Environment Plan.

In 2007, I made the move back to the Northland Regional Council where ever since I have held various policy positions. I have held my current position as Policy Development Manager since 2014. Key roles in these policy positions have included:

- Leading council's aquaculture plan change (Regional Coastal Plan)
- Overseeing the Regional Coastal Plan and plan changes to it.
- Project lead for council's 2nd generation Regional Policy Statement.

I am currently the project lead for the development of the Proposed Regional Plan for Northland. This role includes managing the project, providing general oversight for the Plan, and reviewing and advising on provision development.

Jon Trewin

I have worked as a Policy Analyst for the Northland Regional Council (regional council) for over 8 years. I have a Masters (MSc) in Development Planning from the University of Reading, UK gained in 2005.

I first started working at the Northland Regional Council in 2009. Prior to this I worked in policy development (mainly urban regeneration, environmental and transport planning) in the UK. At Northland Regional Council I have worked primarily on policy development around infrastructure, air quality, significant areas/heritage, transport and economic development matters.

Michael Payne

I work as a Policy Analyst for the Northland Regional Council (regional council). I have a Bachelor of Social Science from the University of Waikato. I started in my current role of Policy Analyst in August 2011. Since that time key projects have included:

- Project lead on the Regional Form, Hazardous Substances and Versatile components of the Regional Policy Statement.
- Project lead on the Moorings and Marinas Strategy. A non-statutory strategy planning for future on water boat storage in the Bay of Islands.

Prior to commencing my role at the regional council, I worked as a Policy Analyst at Matamata-Piako District Council where my primary responsibility was developing a second-generation district plan.

In my role as a Policy Analyst at the regional council I have worked primarily on policy development for coastal matters including moorings, marinas and surfbreaks as well as hazardous substance management and contaminated land.

Ben Tait

I am employed as a policy analyst by Northland Regional Council. I hold a Bachelor of Arts in Biology from Pepperdine University and a Master of Environmental Legal Studies (Honours) from University of Auckland.

I have been with Northland Regional Council for approximately seven years, and specialise in the development and review of regulatory management policy under the RMA. I also provide advice on non-regulatory initiatives to maintain and improve water quality. Prior to joining the council, I was employed in the private sector as an environmental scientist and environmental planner, where I was mainly involved in the preparation of applications for resource consents for major wastewater discharges.

Justin Murfitt

I am the Resource Management Planning and Policy Manager for the Northland Regional Council – I have been in this role since mid-2014. I have a Bachelor of Resource Studies Degree from Lincoln University and post-graduate planning papers from Massey University. I started work at the Northland Regional Council as a policy analyst (coastal) in March 2008 and have held several positions in the Planning and Policy team since then. Key projects have included:

- Project management of council's 2010 review of its pest management strategies
- Project lead on the Regional Policy Statement mapping project (mapping the coastal environment, outstanding natural features / landscapes and high and outstanding natural character).
- Oversight of the development of five non-statutory catchment plans.

Prior to joining the Northland Regional Council, I worked in the private sector as a planning consultant for seven years – primary roles were the preparation of resource consent applications for development proposals and representing clients in district plan change processes.

James Griffin

I have worked as a Policy Analyst for the Northland Regional Council (regional council) since 2012. I have a Diploma in Conservation and Environmental Management from Northland

Polytechnic and a Higher National Diploma in Environmental Analysis and Monitoring from Farnborough College of Technology in the UK. In addition to full time work, I currently study part-time through Unitec for a Bachelor of Applied Science (Biodiversity Management major). I have worked directly, and as a consultant for, both the public and private sector. My roles since 2000 have involved compliance, consents and policy and in the 1990's I worked in project management for environmental consultancies in the UK. I have held full membership of the New Zealand Planning Institute since 2017.

Michael Day

I am the Resource Management Manager for Northland Regional Council. I have a Masters in Regional and Resource Planning degree (with distinction) from the University of Otago.

My post-graduate planning experience includes working as a resource consents officer for Christchurch City Council as well as undertaking Policy and Strategic Planning for several councils in England.

I have worked for Northland Regional Council (in various policy development positions) since September 2008. I have held my current position since 2014. Key roles in these policy positions have included:

- Plan 'lead' for the Regional Coastal Plan, including management of Plan Changes through the Schedule 1 process.
- Involvement in 10-year review of Regional Policy Statement for Northland and subsequent development of the new Regional Policy Statement for Northland (from issues and options analysis through to adoption) with a focus on natural hazard management.
- Involvement in 10-year review of existing Regional Plans and subsequent development of Proposed Regional Plan for Northland.
- Representing the council at various district council plan change hearings.

Keir Volkerling

I have been contracted by the regional council to develop the tangata whenua policies for the Proposed Regional Plan, their application in relevant rules, the associated s32 report, and this s42A report. I have worked for iwi authorities in Northland in development and management roles. In recent years, I have worked on resource management for iwi, local government, and for central government.

My previous RMA and related work includes:

- *With iwi:* developing iwi planning documents; submissions and appeals on consents and planning, with consequential Environment Court and formal mediation appearances; advice to national Iwi Chairs Forum.
- *With local government:* advisor to a tangata whenua member of the Hauraki Gulf Forum for eight years; developing tangata whenua natural resources provisions for the Auckland Unitary Plan; development of Treaty guidelines and preparation for district plan review for Far North District Council.
- *With central government:* Member of the 2011 Technical Advisory Group chaired by Sir Douglas Kidd to propose reform to aquaculture legislation; appointed by an Iwi Leader Group to work with Ministry of Fisheries to develop mechanisms for delivery of the aquaculture settlement, and to develop a regulation for aquaculture.

Appendix B – The submissions and the s42A report they are being addressed in

The Summary of Decisions Requested grouped submissions by provision, generally following the same format as the Proposed Regional Plan. Table 1 shows the Summary of Decisions Requested sections and the relevant s42A report. Table 2 shows the definitions and the relevant s42A report

Table 1: *The plan provisions and the s42A report addressing the provisions and the submissions on them.*

Summary of Decisions Requested section	S42A report
A Introduction	<i>General approach</i>
B Definitions - general submissions	As relevant. If very general, then addressed in <i>General approach</i> otherwise addressed in relevant report.
Definitions	See Table 2 below.
C Rules - general submissions	As relevant. If very general, then addressed in <i>General approach</i> otherwise addressed in relevant report.
C.1 Coastal activities - general submissions	<i>Coastal structures</i>
C.1.1 General structures	<i>Coastal structures,</i>
C.1.2 Moorings and anchorage	<i>Moorings and anchorage</i>
C.1.3 Aquaculture	<i>Aquaculture</i>
C.1.4 Mangrove removal	<i>Mangrove management</i>
C.1.5 Dredging, disturbance and disposal	<i>Dredging and disturbance</i>
C.1.6 Reclamations	<i>Coastal reclamations</i>
C.1.7 Marine pests	<i>Marine pests</i>
C.1.8 Coastal works general conditions	<i>Coastal structures</i> <i>Mangroves (mangrove conditions only)</i>
C.2 Activities in the beds of lakes and rivers and in wetlands	<i>Land drainage and flood control (rules C.2.1.5, C.2.1.14, C.2.1.15)</i> <i>Wetlands, beds of lakes and rivers, damming and diverting water (the rest of C.2)</i>
C.3 Damming and diverting water	<i>Land drainage and flood control (C.3.8)</i> <i>Wetlands, beds of lakes and rivers, damming and diverting water (the rest of C.3)</i>
C.4 Land drainage and flood control	<i>Land drainage and flood control</i>
C.5 Taking and using water	<i>Allocation and use of fresh water</i>
C.6 Discharges to land and water - general submissions	<i>Water quality management – general matters</i>
C.6.1 On-site domestic wastewater discharges	<i>Wastewater discharges</i>
C.6.2 Wastewater network and treatment plant discharges	<i>Wastewater discharges</i>
C.6.3 Agricultural waste discharges	<i>Wastewater discharges</i>
C.6.4 Stormwater discharges	<i>Stormwater discharges</i>

C.6.5 Agrichemicals	<i>Agrichemicals</i>
C.6.6 Industrial and trade discharges	<i>Other discharges of contaminants to land and water</i>
C.6.7 Solid waste	<i>Solid waste</i>
C.6.8 Contaminated land	<i>Contaminated land</i>
C.6.9 Other discharges of contaminants	<i>Other discharges of contaminants to land and water</i>
C.7 Discharges to air	<i>Air quality</i>
C.8 Land use and disturbance activities - general submissions	As relevant: <i>Earthworks, land preparation, vegetation clearance and bores</i> <i>Livestock access to waterways and the coastal marine area</i>
C.8.1 Stock exclusion	<i>Livestock access to waterways and the coastal marine area</i>
C.8.2 Cultivation	<i>Earthworks, land preparation, vegetation clearance and bores</i>
C.8.3 Earthworks	<i>Earthworks, land preparation, vegetation clearance and bores</i>
C.8.4 Vegetation clearance	<i>Earthworks, land preparation, vegetation clearance and bores</i>
C.8.5 Bores	<i>Earthworks, land preparation, vegetation clearance and bores</i>
C.8.6 Re-building	<i>Re-building of materially damaged or destroyed buildings</i>
D Policies - general submissions	As relevant. If very general, then addressed in <i>General approach</i> otherwise addressed in relevant report.
D.1 Tangata whenua	<i>Tangata whenua</i>
D.2 General	<i>General approach</i> (general submissions & D.2.1 - D.2.5) <i>Significant natural and historic heritage</i> (D.2.6 - D.2.8)
D.3 Air	<i>Air quality</i>
D.4 Land and water - general submissions	As relevant. If very general, then addressed in <i>General approach</i> otherwise addressed in relevant report.
D.4.1 - D.4.12 Discharges	<i>Water quality management – general matters</i> (D.4.1 - D.4.6, D.4.8 and D.4.9) <i>Wastewater discharges</i> (D.4.7) <i>Agrichemicals</i> (D.4.10) <i>Solid waste</i> (D.4.11 and D.4.12)
D.4.13 - D.4.24 Water takes and use	<i>Allocation and use of fresh water</i>
D.4.25 - D.4.30 Wetlands, drainage and freshwater structures	<i>Land drainage and flood control</i> (D.4.25-D.4.26) <i>Wetlands, beds of lakes and rivers, damming and diverting water</i> (D.4.27-D.4.30)
D.4.31 - D.4.32 Land disturbance	<i>Earthworks, land preparation, vegetation clearance and bores</i>
D.5 Coastal	As relevant. If very general, then addressed in <i>General approach</i> otherwise addressed in relevant report.
D.5.1 - D.5.6 Aquaculture	<i>Aquaculture</i>
D.5.7 - D.5.8 Zones	<i>Coastal structures</i>
D.5.9 - D.5.12 Moorings and anchorages	<i>Moorings and anchorage</i>

D.5.13 - D.5.17 Marinas	<i>Coastal structures</i>
D.5.18 - D.5.20 Dredging, disturbance and deposition	<i>Dredging, disturbance and disposal in the coastal marine area</i>
D.5.21 Noise	<i>Coastal structures</i>
D.5.22 - D.5.24 Mangroves	<i>Mangrove management</i>
D.5.25 Marine pests	<i>Marine pests</i>
D.5.26 - D.5.27 Surfbreaks	<i>Significant natural and historic heritage</i>
D.6 Natural Hazards	<i>Coastal structures (D.6.1 and D.6.2) Re-building of materially damaged or destroyed buildings (D.6.3) Wetlands, beds of lakes and rivers, damming and diverting water (D.6.4 and D.6.5)</i>
E Catchments	<i>Catchments</i>
F Objectives	<i>General approach</i>
G Administrative matters	<i>General approach</i>
G.1 Cross-river coastal marine area boundary	No submissions therefore not addressed in S42A report
G.2 Statutory acknowledgements	<i>General approach</i>
G.3 Financial contributions	<i>General approach</i>
G.4 Coastal occupation charging	<i>Coastal structures</i>
H Appendices	n/a
H.1 Wastewater network management plans	<i>Wastewater discharges</i>
H.2 Stormwater management plans	<i>Stormwater discharges</i>
H.3 Chimney height requirements	<i>Air quality</i>
I Maps - General submissions	As relevant. If very general, then addressed in <i>General approach</i> otherwise addressed in relevant report.
I Maps - Coastal zones	<i>Coastal structures</i>
I Maps - Significant ecological areas	<i>Significant natural and historic heritage</i>
I Maps - Anchorages, marine pollution limits and enclosed waters	<i>Moorings and anchorage</i>
I Maps - Surfbreaks	<i>Significant natural and historic heritage</i>
I Maps - Marine pathways	<i>Marine pests</i>
I Maps - Cross-river CMA	<i>Coastal structures</i>
I Maps - Sites of sig TW	<i>Tangata whenua</i>
I Maps - ONFs, NC, heritage	<i>Significant natural and historic heritage</i>
I Maps - water quality and quantity management units	<i>Allocation and use of fresh water Water quality management – general matters</i>
I Maps - catchment specific layers	<i>Catchments</i>
I Maps - Flood protection schemes	<i>Land drainage and flood control</i>
I Maps - Air sheds	<i>Air quality</i>
I Maps - Livestock exclusion and highly erodible land	<i>Livestock access to waterways and the coastal marine area</i>
J General submissions on whole plan	As relevant. If very general, then addressed in <i>General approach</i> otherwise addressed in relevant report.
K Submissions on matters not included in the plan	<i>General approach</i>
K.1 Genetically modified organisms	Not addressed – separate hearing

K.2 Marine pests	<i>General approach</i>
K.3 Other	<i>General approach</i>

Table 2: Definitions and the s42A report addressing submissions on them. Note – only the definitions (existing and new) which a submission was made on are included.

Definition	S42A report
Ambient air quality	<i>Air quality</i>
Abrasive blasting	<i>Air quality</i>
Activities sensitive to air discharges (New)	<i>Air quality</i>
Agrichemicals	<i>Air quality</i>
Aids to navigation	<i>Coastal structures</i>
Allocation limit	<i>Allocation and use of fresh water</i>
Anti-fouling system (New)	<i>Marine pests</i>
Approved kauri disposal landfill (New)	<i>Earthworks, land preparation, vegetation clearance and bores</i>
Archaeological site (New)	<i>Significant natural and historic heritage</i>
Artificial watercourse	<i>Wetlands, beds of lakes and rivers, damming and diverting water</i>
Artificial wetland (New)	<i>Wetlands, beds of lakes and rivers, damming and diverting water</i>
Authorised	<i>General approach</i>
Bank full edge (New)	<i>Wetlands, beds of lakes and rivers, damming and diverting water</i>
Beach scraping	<i>Dredging, disturbance and disposal in the coastal marine area</i>
Biodiversity off-setting (New)	<i>Wetlands, beds of lakes and rivers, damming and diverting water</i>
Biofouling	<i>Marine pests</i>
Biosolids	<i>Solid Waste</i>
Bore	<i>Earthworks, land preparation, vegetation clearance and bores</i>
Catchment plan	<i>Catchments</i>
Catchment-specific allocation limit	<i>Allocation and use of fresh water</i>
Channel (New)	<i>Wetlands, beds of lakes and rivers, damming and diverting water</i>
Cleanfill	<i>Solid Waste</i>
Coastal dune restoration	<i>Earthworks, land preparation, vegetation clearance and bores</i>
Coastal hazard management area	<i>Earthworks, land preparation, vegetation clearance and bores</i>
Coastal water (New)	<i>General approach</i>
Community controlled organisation	<i>Air quality</i>
Compost	<i>Solid Waste</i>
Conspicuous change in the colour or visual clarity (New)	<i>Wetlands, beds of lakes and rivers, damming and diverting water</i>
Constructed wetland	<i>Wetlands, beds of lakes and rivers, damming and diverting water</i>
Contaminant of concern (New)	<i>Water quality</i>
Contaminated Land	<i>Contaminated land</i>

Contractor	<i>Agrichemicals</i>
Core local infrastructure (New)	<i>Coastal structures</i>
Council controlled organisation (New)	<i>Air quality</i>
Craft Risk Management Standard - Biofouling (New)	<i>Marine pests</i>
Cultivation	<i>Earthworks, land preparation, vegetation clearance and bores</i>
Dairy Support Cattle	<i>Livestock access to waterways and the coastal marine area</i>
Dam	<i>Wetlands, beds of lakes and rivers, damming and diverting water</i>
Default allocation limit	<i>Allocation and use of fresh water</i>
Dewatering	<i>Allocation and use of fresh water</i>
Direct or high connectivity aquifer (New)	<i>Allocation and use of fresh water</i>
District council infrastructure (New)	<i>Various</i>
Domestic type wastewater	<i>Wastewater discharges</i>
Dust sensitive area	<i>Air quality</i>
Earth	<i>Earthworks, land preparation, vegetation clearance and bores</i>
Earthworks	<i>Earthworks, land preparation, vegetation clearance and bores</i>
Effectively excluded	<i>Livestock access to waterways and the coastal marine area</i>
Efficiency (New)	<i>Allocation and use of fresh water</i>
Efficient use of water (New)	<i>Allocation and use of fresh water</i>
Effluent (New)	<i>Wastewater discharges</i>
Ephemeral watercourse (New)	<i>Earthworks, land preparation, vegetation clearance and bores</i>
Environmental compensation (New)	<i>Wetlands, beds of lakes and rivers, damming and diverting water</i>
Erosion control plan	<i>Catchments</i>
Farm (New)	<i>Water quality management – general matters</i>
Farm environment plan (New)	<i>Water quality management – general matters</i>
Farm wastewater	<i>Wastewater discharges</i>
Farm wastewater storage facilities	<i>Wastewater discharges</i>
Fertiliser (New)	<i>Other discharges of contaminants to land and water</i>
Flaring (New)	<i>Air quality</i>
Flood defence	<i>Land drainage and flood control</i>
Flood hazard areas	<i>Earthworks, land preparation, vegetation clearance and bores</i>
Foreshore (New)	<i>General approach</i>
Free-range poultry (New)	<i>Air quality</i>
Fully allocated	<i>Allocation and use of fresh water</i>
Functional need	<i>Coastal structures</i>
Geotechnical bore (New)	<i>Earthworks, land preparation, vegetation clearance and bores</i>
Geothermal surface feature (New)	<i>Allocation and use of fresh water</i>
Good management practices (New)	<i>Water quality management – general matters</i>
Ground based spraying	<i>Air Quality</i>
Hard protection structure	<i>Coastal structures</i>

Hazardous substances (New)	<i>Contaminated land</i>
High risk flood hazard areas	<i>Re-building of materially damaged or destroyed buildings</i>
High risk coastal hazard area	<i>Re-building of materially damaged or destroyed buildings</i>
High risk industrial and trade premises	<i>Stormwater discharges</i>
High sediment-yielding land	<i>Catchments</i>
Highly erodible land	<i>Earthworks, land preparation, vegetation clearance and bores</i>
Highly treated wastewater (New)	<i>Wastewater discharges</i>
Historic heritage (New)	<i>Significant natural and historic heritage</i>
Historic heritage area	<i>Significant natural and historic heritage</i>
Historic heritage site	<i>Significant natural and historic heritage</i>
Historic heritage site addition (Structure or building) (New)	<i>Significant natural and historic heritage</i>
Historic heritage site alteration (Structure or building) (New)	<i>Significant natural and historic heritage</i>
Historic heritage site demolition (Structure or building) (New)	<i>Significant natural and historic heritage</i>
Historic heritage site maintenance (Structure or Building) (New)	<i>Significant natural and historic heritage</i>
Historic heritage site partial demolition (New)	<i>Significant natural and historic heritage</i>
Historic heritage site repair (New)	<i>Significant natural and historic heritage</i>
Horticulture wastewater (New)	<i>Wastewater discharges</i>
Horticulture wastewater system (New)	<i>Wastewater discharges</i>
Impervious area	<i>Stormwater discharges</i>
Incineration device	<i>Air Quality</i>
Indigenous vegetation (New)	<i>Earthworks, land preparation, vegetation clearance and bores</i>
Induced wetland	<i>Wetlands, beds of lakes and rivers, damming and diverting water</i>
Industrial wastewater treatment plant (New)	<i>Wastewater discharges</i>
Intermittently flowing river	<i>Wetlands, beds of lakes and rivers, damming and diverting water</i>
Irrigation application efficiency (New)	<i>Allocation and use of fresh water</i>
Land drainage	<i>Land drainage and flood control</i>
Land drainage scheme	<i>Land drainage and flood control</i>
Land preparation (New)	<i>Earthworks, land preparation, vegetation clearance and bores</i>
Lake (New)	<i>Allocation and use of fresh water</i>
Length overall (New)	<i>Marine pests</i>
Light fouling	<i>Marine pests</i>
Livestock	<i>Livestock access to waterways and the coastal marine area</i>
Livestock crossing point	<i>Livestock access to waterways and the coastal marine area</i>
Maintenance dredging	<i>Dredging, disturbance and disposal in the coastal marine area</i>
Marine Pathways designated place (New)	<i>Marine pests</i>
Materially damaged	<i>Re-building of materially damaged buildings</i>
Minimum flow	<i>Allocation and use of fresh water</i>
Minimum level	<i>Allocation and use of fresh water</i>

Minor reclamation (New)	<i>Coastal reclamations</i>
Modified watercourse	<i>Wetlands, beds of lakes and rivers, damming and diverting water</i>
Mooring	<i>Moorings and anchorage</i>
Native dune vegetation	<i>Earthworks, land preparation, vegetation clearance and bores</i>
Native woody vegetation (New)	<i>Earthworks, land preparation, vegetation clearance and bores</i>
Natural character (New)	<i>Significant natural and historic heritage</i>
Natural wetland	<i>Wetlands, beds of lakes and rivers, damming and diverting water</i>
Noise from non-port and wharf related activities (New)	<i>Coastal structures</i>
Noise sensitive activities (New)	<i>Coastal structures</i>
Odour- sensitive area	<i>Air Quality</i>
Off-stream	<i>Wetlands, beds of lakes and rivers, damming and diverting water</i>
Operational need	<i>Coastal structures</i>
Other property	<i>General approach</i>
Outdoor burning	<i>Air quality</i>
Passive discharge	<i>Contaminated land</i>
Pastoral landuse	<i>Catchments</i>
Permanently flowing river or drain	<i>Allocation and use of fresh water</i>
Plantation forestry	<i>Earthworks, land preparation, vegetation clearance and bores</i>
Potentially contaminated land	<i>Contaminated land</i>
Poultry farming (New)	<i>Air quality</i>
Primary treatment	<i>Wastewater discharges</i>
Property	<i>General approach</i>
Public amenity area	<i>Air quality</i>
Public stormwater network	<i>Stormwater discharges</i>
Quarrying (New)	<i>Earthworks, land preparation, vegetation clearance and bores</i>
Reasonable mixing zone (New)	<i>Water quality management – general matters</i>
Reclamation	<i>Coastal reclamations</i>
Recognised anchorages (New)	<i>Moorings and anchorage</i>
Recognised recreational anchorages (New)	<i>Moorings and anchorage</i>
Regionally significant infrastructure	<i>Regionally significant infrastructure and renewable energy generation</i>
Reverted wetland	<i>Wetlands, beds of lakes and rivers, damming and diverting water</i>
River (New)	<i>Wetlands, beds of lakes and rivers, damming and diverting water</i>
Secondary treatment	<i>Wastewater discharges</i>
Seismic upgrading (New)	<i>Significant natural and historic heritage</i>
Sensitive groundwater	<i>Contaminated land</i>
Shellfish beds (New)	<i>Dredging, disturbance and disposal</i>
Significant wetland	<i>Wetlands, beds of lakes and rivers, damming and diverting water</i>
Site or area of significance to Tangata Whenua (New)	<i>Tangata whenua</i>

Small vessels not requiring anti- fouling system (New)	<i>Marine pests</i>
Smoke sensitive area	<i>Air quality</i>
Stormwater (New)	<i>Stormwater discharges</i>
Stormwater interceptor	<i>Stormwater discharges</i>
Stormwater collection system	<i>Stormwater discharges</i>
Stormwater interceptor system	<i>Stormwater discharges</i>
Structure	<i>Coastal structures</i>
Supplementary allocation	<i>Allocation and use of fresh water</i>
Surface water	<i>Other discharges of contaminants to land and water</i>
Tangata whenua entity (New)	<i>Tangata whenua</i>
Temporary military training activities (New)	<i>Coastal structures</i>
Toxic-contaminant (New)	<i>Water quality management – general matters</i>
Trade waste (new)	<i>Stormwater discharges</i>
Treated farm wastewater (New)	<i>Wastewater discharges</i>
Untreated farm wastewater (New)	<i>Wastewater discharges</i>
Vegetation clearance	<i>Earthworks, land preparation, vegetation clearance and bores</i>
Vertebrate toxic agent	<i>Air quality</i>
Vessel	<i>Marine pests</i>
Vessel length (New)	<i>Marine pests</i>
Wastewater	<i>Wastewater discharges</i>
Water (New)	<i>General approach</i>
Waterbody (New)	<i>General approach</i>
Wetland	<i>Wetlands, beds of lakes and rivers, damming and diverting water</i>
Wetland enhancement	<i>Wetlands, beds of lakes and rivers, damming and diverting water</i>
Zone of reasonable mixing (New)	<i>Water quality management – general matters</i>

Appendix C - Extract on scope from the Independent Hearing Panel report to Auckland Council

The extract is from - *Report to Auckland Council: Overview of recommendations on the proposed Auckland Unitary Plan*, Auckland Unitary Plan Independent Hearings Panel, 22 July 2016.

<http://temp.aucklandcouncil.govt.nz/EN/planspoliciesprojects/plansstrategies/unitaryplan/Documents/ihprecommendations/ihpoverviewofrecommendations.pdf>

4. Scope

4.1. Summary

The scope for the Panel's recommendations generally lies between the provisions of the Unitary Plan as notified by the Council and the relief sought in submissions on the Unitary Plan. This can include consequential amendments that are necessary or desirable to give effect to such relief. In addition, the Panel has a special power to recommend amendments even where there is no scope for that in submissions. That power must be exercised in accordance with the principles of natural justice and the requirement in the Local Government (Auckland Transitional Provisions) Act 2010 that the Panel establish a procedure for hearing sessions that is appropriate and fair in the circumstances.

The extent to which many submissions sought broad and extensive relief means that the scope for recommending changes to the Unitary Plan is very wide. The particular recommendations that are beyond the scope of submissions are identified in the recommendation reports and summarised in Appendix 3 to this overview report.

4.2. Relevant law

The Council must act in accordance with the Resource Management Act 1991 when preparing or changing a policy statement or plan. In addition, in relation to the Unitary Plan, the Council must also act in accordance with the Local Government (Auckland Transitional Provisions) Amendment Act 2010.

The starting point is that a policy statement or plan must be prepared by the relevant local authority "in the manner set out in Schedule 1" to the Resource Management Act 1991⁷¹. Schedule 1 has been described as a code for this process⁷² although important glosses have been added by case law as discussed below.

A careful reading of the text of the relevant clauses in Schedule 1 shows how the submission and appeal process in relation to a proposed plan is confined in scope. Submissions must be on the proposed plan in support of or in opposition to particular provisions and cannot raise matters unrelated to what is proposed. If a submitter seeks changes to the proposed plan, then the submission should set out the specific amendments sought. The publicly notified summary of submissions is an important document, as it enables others who may be affected by the amendments sought in submissions to participate either by opposing or supporting those amendments, but such further submissions cannot introduce additional matters. The Council's decisions must be in relation to the provisions and matters raised in submissions, and any appeal from a decision of a council must be in respect of identified

⁷¹ Sections 60(1), 64(1) and 73(1) Resource Management Act 1991

⁷² See *Re Vivid Holdings Ltd* [1999] NZRMA 467 at para (16).

provisions or matters. The Environment Court's role then is to hold a hearing into the provision or matter referred to it and make its own decision on that within the same framework as the Council⁷³.

...

Having set out the relevant statutory provisions, it is also important to keep in mind the case law which has interpreted and applied them, noting that the Panel has been operating under a unique regime which has not been tested through case law. Even within the parameters of Schedule 1 to the Resource Management Act 1991, the process is tempered appropriately by considerations of fairness and reasonableness.

In the leading case of *Countdown Properties (Northlands) Ltd v Dunedin City Council*⁷⁴ a full court of the High Court considered a number of issues arising out of the plan change process under the Act, including the decision-making process in relation to submissions. The High Court confirmed that the paramount test is whether or not the amendments are ones which are raised by and within the ambit of what is reasonably and fairly raised in submissions on the plan change. It acknowledged that this will usually be a question of degree to be judged by the terms of the proposed change and the content of the submissions. The Court observed that councils need scope to deal with the realities of the situation where there may be multiple and often conflicting submissions prepared by persons without professional help. In such circumstances, to take a legalistic view that a council could only accept or reject the relief sought would be unreal.

As observed in an oft-repeated dictum in *Royal Forest & Bird Protection Society Inc v Southland District Council*⁷⁵:

... it is important that the assessment of whether any amendment was reasonably and fairly raised in the course of submissions, should be approached in a realistic workable fashion rather than from the perspective of legal nicety.

Since those cases were decided, subsequent case law shows that the circumstances of particular cases have led to the identification of two fundamental principles:

- i. the Court cannot permit a planning instrument to be appreciably amended without real opportunity for participation by those potentially affected (see *Clearwater Resort Ltd v Christchurch City Council*⁷⁶); and
- ii. care must be exercised on appeal to ensure that the objectives of the legislature in limiting appeal rights to those fairly raised by the appeal are not subverted by an unduly narrow approach (see *Power v Whakatane District Council & Ors*⁷⁷).

As has been observed in the case law itself, there is obvious potential for tension between these two principles. The resolution of that tension depends on ensuring that the process for dealing with

⁷³ Section 290 of the Resource Management Act 1991

⁷⁴ [1994] NZRMA 145. ¹² [1997] NZRMA 408at 413. ¹³ (unreported: High Court, Christchurch, AP34/02, 14 March 2003, William Young J) at para [66]. ¹⁴ (unreported: High Court, Tauranga, CIV-2008-470-456, 30 October 2009, Allan J) at para [30].

⁷⁵ [1997] NZRMA 408at 413

⁷⁶ (unreported: High Court, Christchurch, AP34/02, 14 March 2003, William Young J) at para [66].

⁷⁷ (unreported: High Court, Tauranga, CIV-2008-470-456, 30 October 2009, Allan J) at para [30].

amendments is fair not only to the parties but also to the public. Quoting from *Westfield (NZ) Ltd v Hamilton City Council*⁷⁸:

[72] I agree that the Environment Court cannot make changes to a plan where the changes would fall outside the scope of a relevant reference and cannot fit within the criteria specified in ss 292 and 293 of the Act: see *Applefields, Williams and Purvis*, and *Vivid*⁷⁹.

[73] On the other hand I think it implicit in the legislation that the jurisdiction to change a plan conferred by a reference is not limited to the express words of the reference. In my view it is sufficient if the changes directed by the Environment Court can fairly be said to be foreseeable consequences of any changes directly proposed in the reference.

[74] Ultimately, it is a question of procedural fairness. Procedural fairness extends to the public as well as to the submitter and the territorial authority. Adequate notice must be given to those who might seek to take an active part in the hearing before the Environment Court if they know or ought to foresee what the Environment Court may do as a result of the reference. This is implicit in ss 292 and 293. The effect of those provisions is to provide an opportunity for others to join the hearing if proposed changes would not have been within the reasonable contemplation of those who saw the scope of the original reference.

The consideration of procedural fairness was discussed in *Motor Machinists Ltd v Palmerston North City Council*⁸⁰. That case was principally concerned with the related issue of whether a submission was 'on' a plan change, but Kós J examined that question in its context of the scope for amendments to plan changes as a result of submissions by reference to the bipartite approach taken in *Clearwater*.

- i. whether the submission addresses the change to the status quo advanced by the proposed plan change; and
- ii. whether there is a real risk that persons potentially affected by such a change have been denied an effective opportunity to participate in the plan change process.

Laying stress on the procedures under the Resource Management Act 1991 for the notification of proposals to directly affected people, and the requirement in section 32 for a substantive assessment of the effects or merits of a proposal, Kós J observed that the Schedule 1 process lacks those safeguards for changes to proposed plans as sought in submissions. The lack of formal notification of submissions to affected persons means that their participatory rights are dependent on seeing the summary of submissions, apprehending the significance of a submission that may affect their land, and lodging a further submission within the prescribed timeframe.

In particular, his Honour noted that a core purpose of the statutory plan change process is to ensure that persons potentially affected by the proposed plan change are adequately informed of what is proposed. He observed:

[77] ... It would be a remarkable proposition that a plan change might so morph that a person not directly affected at one stage (so as not to have received notification initially under clause 5(1A)) might then find themselves directly affected but speechless at a later stage by dint of a third party submission not directly notified as it would have been had it been

⁷⁸ [2004] NZRMA 556 at 574-575.

⁷⁹ *Applefields Ltd v Christchurch City Council* [2003] NZRMA 1; *Williams and Purvis v Dunedin City Council* (Environment Court, CO22/C002, 21 February 2002, Judge Smith); and *Re Vivid Holdings Ltd* [1999] NZRMA 467.

⁸⁰ [2013] NZHC 1290.

included in the original instrument. It is that unfairness that militates the second limb of the *Clearwater* test.

As in the *Westfield* case, however, this approach does not set any absolute limit:

[81] ... Yet the *Clearwater* approach does not exclude altogether zoning extension by submission. Incidental or consequential extensions of zoning changes proposed in a plan change are permissible, provided that no substantial further s 32 analysis is required to inform affected persons of the comparative merits of that change. Such consequential modifications are permitted to be made by decision makers under schedule 1, clause 10(2). Logically they may also be the subject of submission.

A further aspect of the scope for consequential change is where, as here, the regional policy statement is the subject of submissions and recommendations. Because the plans must give effect to the regional policy statement,⁸¹ it follows that submissions seeking amendments to the regional policy statement may well result in changes needing to be made to the plans. Similarly, because rules in plans must be appropriate ways to achieve objectives and policies,⁸² it follows that where changes are made to objectives and policies, consequential changes may need to be made to the rules.⁸³

To the extent that much of the relevant case law relates to changes to parts of operative plans rather than a review of an entire plan, or indeed the preparation of a fully combined plan, the guidance on the limits of consequential amendments needs to be considered carefully in light of the scale of the planning exercise.

⁸¹ For the regional plan (including the regional coastal plan) see section 67(3)(c), and for the district plan see section 75(3)(c), of the Resource Management Act 1991

⁸² See sections 32(1)(b), 68(1)(b) and 76(1)(b) of the Resource Management Act 1991

⁸³ *Clark Fortune McDonald and Associates v Queenstown Lakes District Council (No 2)* Decision No C89/2002.